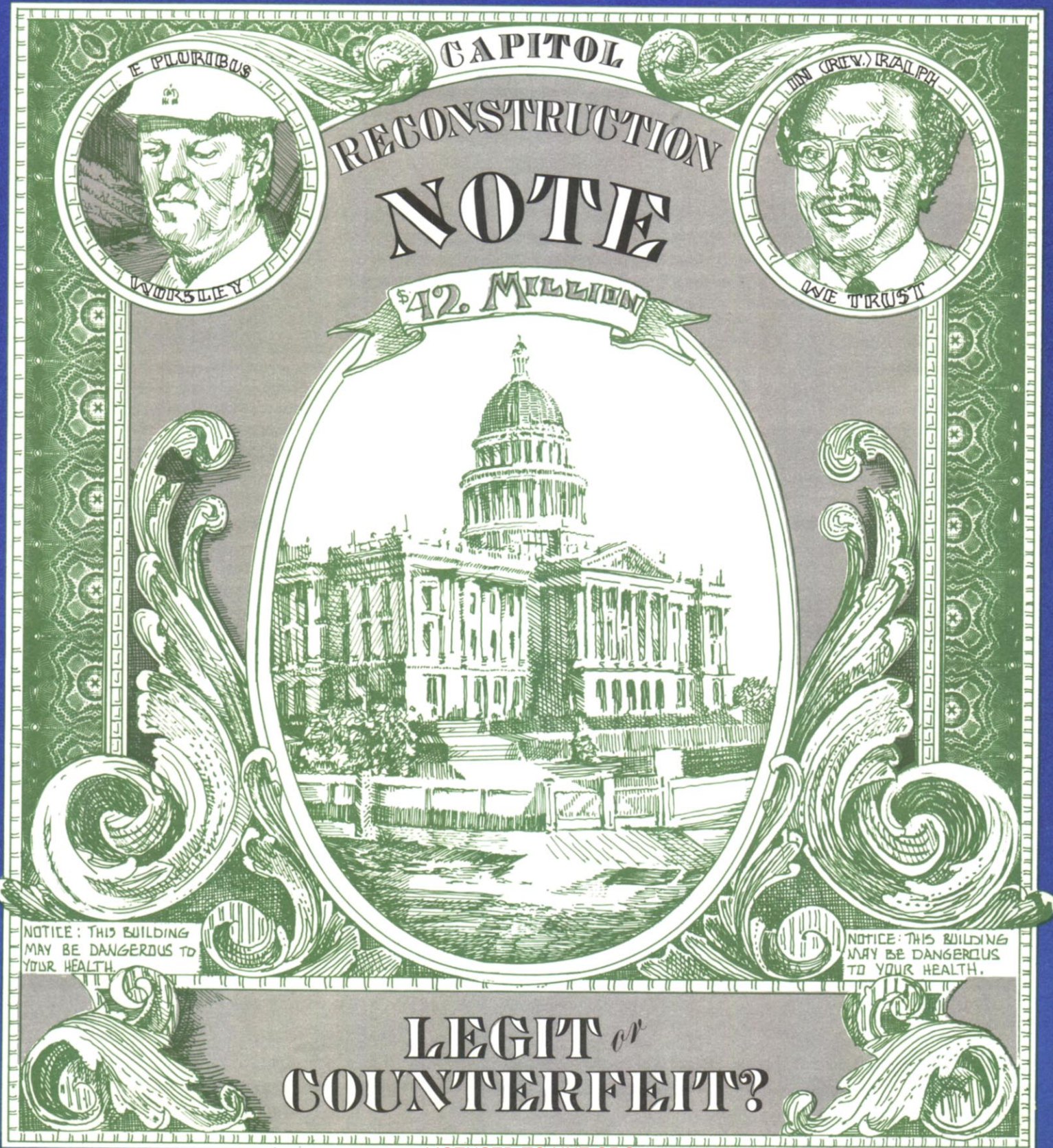


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THE MONTHLY ANALYSIS OF STATE GOVERNMENT AND POLITICS



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A PERSONAL PERSPECTIVE . . .

By Ed Salzman

The real Serrano issue

In years to come, public employees may look back at this year's session of the state Legislature and record it as a near-total disaster. And that's not because the Governor blue-pencilled part of the pay raise voted by the Legislature, at a time when the treasury contained so much money that the sky was the limit. The real public-employee battles of 1977 — and they are mammoth — have to do with benefits for workers who provide the state's most vital public services: education and public safety.

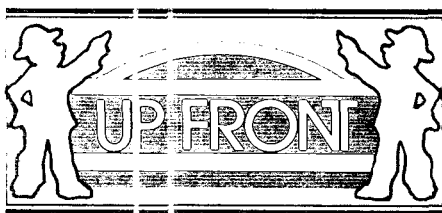
The first conflict pits the state's firefighters and policemen against cities and counties over a bill by Senator David Roberti. This bill would establish compulsory arbitration as the method for settling disputes involving public-safety employees. Local-government officials took the stand that even a strike is preferable to having an outsider designated as the arbitrator make major decisions for a community. Roberti's bill has been defeated once on the Senate floor but it can be revived. The firefighters and police officers seem determined to try again. (Anyone who follows professional sports can understand why binding arbitration might look attractive to an employee organization. The typical professional athlete now earns five times as much as a legislator, as a result of decisions by an arbitrator who had no direct economic stake in the consequences of his rulings.)

The second conflict is the bottom-line issue in the struggle over a legislative solution to the state Supreme Court's *Serrano* decision on school finance. The real issue isn't how much money the Legislature should appropriate to equalize school funding. The state is so loaded with cash that almost any reasonable amount could be spent without plunging the state into the red. Nor is the key issue how the funds will be distributed among the various rich and poor districts. The rival bills by Senator Albert Rodda and Assemblyman Leroy Greene take different paths but would end at almost the same destination after five years.

Most of the behind-the-scenes heat is being generated over how many strings, if any, should be attached to the funds being parceled out to the districts. Should the *Serrano* legislation be limited to general support, as proposed by Rodda? Or should the package be loaded with funds for special "accountability" programs such as early childhood education and increased allocations for the handicapped, as proposed by Greene? At this point, the Greene approach has the upper hand because it is supported by the Governor and the Assembly leadership.

Teacher organizations want all the money to be available for salary increases through collective bargaining, and this will not be the case if much of the money is earmarked for special programs. Some school districts side with the teachers, partly because they don't like some of the so-called reform programs that give parents a voice in the operation of the schools and create more work for teachers and administrators.

How these two issues are resolved will have significant long-range impact on the taxpayers of California, and thus far the employee organizations have come up on the short end.



Assemblyman Bud Collier has been loudly in favor of the legislative pay raise bill this year. Rumors are flying in the 72-year-old Republican's Los Angeles County district that Collier will retire after his current term, his 16th. Could there be any connection between the two items?

Young activists on county boards of supervisors have decided to do their own lobbying in Sacramento, independent of the long-established County Supervisors Association of California. The new organization, called Supervisors Network, could mean trouble for CSAC. Supervisor Bill Wallace of Santa Barbara, a leader in the rump group, said impetus for the new organization came at a CSAC meeting. "We were dissatisfied with the pabulum treatment we got," Wallace reported.

Key to Assemblyman John Vasconcellos' added pressure on the University of California budget this year: the assignment of Democrats Gary Hart and Teresa Hughes as new members of Vasconcellos' education-finance subcommittee. With Republican Gordon Duffy often providing support, Vasconcellos now has a working majority on the subcommittee. For the University, this means a heap more trouble next year.

The Planned Parenthood organization, fearful that Governor Brown would blue-pencil family-planning funds from the budget, organized a letter-writing campaign from classes of pregnant teen-agers. Every dime was left in the budget, despite a contrary recommendation from Brown's own Department of Finance.

Senator H. L. (Bill) Richardson was strongly opposed to a bill providing for the resolution of police-and-fire bargaining impasses through binding arbitration. He was on the floor when the measure was debated (and defeated, 16-20) but he didn't vote. The reason: The League of California Cities asked him to abstain, thus avoiding any possibility that a 20-20 tie would allow Lieutenant Governor Mervyn Dymally to cast the tiebreaker.

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ROSTRUM

The **Journal** welcomes comments on articles or on issues involving California government and politics.
The Editors

Where is the demise?

Ray Gonzales' recent article ("A surprise view of Cesar Chavez," *CJ*, April 1977) asks the question, "Why the political demise of the United Farmworker?" Wait a minute — didn't the Agriculture Labor Relations Board get funded with no changes in the law? Didn't Cesar Chavez address the nation on the issue of farmworkers' rights? Aren't there toilets and drinking water in the fields? Didn't the Teamsters abdicate jurisdiction to the UFW? Perhaps I'm confused.

The "experts" cited by Gonzales seem to believe that Proposition 14 was a failure. Long ago I was taught in the art of negotiation the sweetest victory is when the other side thinks he's won! The farmworker movement was never an issue with Chicanos, it was *the* issue. It embodies every controversy which relates to Mexican-Americans. The Mexican-American fight for rights is exemplified in the UFW. Health clinics, bilingual education, worker safety, transitional migrant housing are but a few of the issues which have been brought to light by the farmworker movement . . . Now that unionization is a fact which cannot be ignored, other majority Latino industries are moving in the same direction. . .

The UFW political demise exists only in the minds of those who have failed to recognize the true nature of the victory. Let us not forget that progress has been made. Forty years ago, Chicanos were in railroad or migrant camps, our children were beaten for speaking Spanish on the playground. Signs were not uncommon which read "no dogs and no Mexicans." Today hundreds of Mexican-Americans who participated in the movement are now in government and private industry. Where, I ask, is the demise? We now hold the key to the door of the governor's office of the richest state in the union!

STEVEN J. Y'BARRA
Assistant to the Secretary
Health and Welfare Agency

A plea for space

The May article on the Educational Employment Relations Board demonstrates the weakness inherent in any attempt by any writer, however skilled, to use a small pre-allocated space to describe a complex subject. Some criticism of the EERB was written in such general terms that the absence of facts makes rebuttal not possible. For example, the Los Angeles EERB regional office is described in the article as one that makes "inconsistent decisions." But not one alleged "inconsistent decision" is described. Disagreement among EERB members is described with some specifics but with no attempt to quantify it, and naturally the writer lacked sufficient space to differentiate between philosophical differences . . . and pure personality conflict. The EERB's principal function is to decide cases, but of the 290 pages of decisions written by the board at the time of the article, 44 words from one board member's dissenting opinions were quoted in the article and no summary of any decision was attempted.

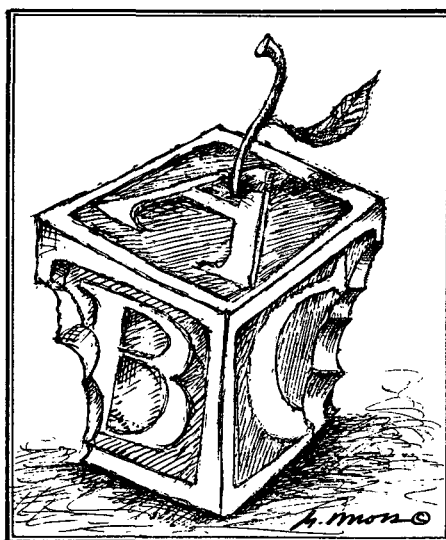
The article states that the EERB has decided 15 unit-determination cases and that these 15 precedents reduced

about 400 disputed representation cases to 93 cases (53 at this writing and dropping rapidly). But then the writer states ". . . *however* there are 380 (representation and unfair practice) cases pending." (Emphasis added.) This conveys the impression that 15 cases have been decided by the EERB and that 380 cases remain undecided by the EERB. Thus, the "work ahead" is described as "staggering." Actually, very few of the 380 "cases pending" will ever reach the EERB members for a decision. Most of them will settle without the need for a hearing; others will settle after an EERB hearing officer makes a recommended decision that is not appealed to the EERB itself. The rest, or about five percent of the whole 380, will gradually reach the EERB for a decision . . . The 202 impasse disputes that the EERB, according to the article, "is attempting to resolve" are not even handled by the EERB. Through an inter-agency agreement between the EERB and the California State Conciliation Service, when the EERB determines that an impasse exists, mediation services are provided by the experienced and highly effective mediators of that 30-year-old agency. Mediation cases, as such, never reach the EERB for any kind of decision.

Representation and unfair practice case settlements which filter off 90 to 95 percent of the cases filed with the EERB before they reach the three-member board are the beauty of the EERB process. Each settlement represents the voluntary termination of what was once a dispute. Settlements are far less costly, less time consuming and less traumatic than a hearing and a decision by the EERB. They allow the EERB members and staff to focus attention on remaining disputed cases. Our high settlement rate attests to the skill of our administrative staff and our hearing officers whose proposed decisions are partially or entirely accepted by all parties in most cases heard by hearing officers. They all apply their knowledge of the Educational Employment Relations Act in actively soliciting early settlements.

But peaceful settlements do not make dramatic public news, nor do decisions on subjects like representation units. While I wish it were otherwise, I understand why these matters usually go unreported in the general media, where space . . . does not increase in size as the complexity of the subject involved increases.

REGINALD ALLEYNE
Chairman, Educational
Employment Relations Board



THE MERCHANDISING OF MIKE CURB

Why so many seek the role of Republican sacrificial lamb



By ED SALZMAN

Quick, who was the last governor denied a second term by California voters? Of course, it was the unforgettable Culbert L. Olson, a Democrat defeated in 1942 by then-Attorney General Earl Warren. Since that time, every governor who has sought a second term has won it — Warren, Pat Brown, Ronald Reagan. And if the polls are even close to right, Jerry Brown will not be an exception.

What then explains the large early field for the right to oppose Brown as the Republican standard bearer next year? Why so much competition for the role of sacrificial lamb? The answer lies not in historical patterns or Brown's vulnerability, but in the personal and political needs of the five GOP candidates. The key question is not how good a chance they have to win but how much they have to lose.

Only Assemblyman Ken Maddy of Fresno appears to be shooting the works with his political career. He will have to give up his seat in the Legislature to run. Mayor Pete Wilson of San Diego and Senator John Briggs of Fullerton have free rides; they keep their present jobs even if they lose. Police Chief Ed Davis of Los Angeles will soon retire; the campaign for governor will be an exciting interlude between his law-enforcement career in Los Angeles and whatever is next in store for him. Attorney General Evelle J. Younger feels the need for a change of scenery, and this will probably be his last chance to run for governor. He'll be 60 shortly after next June's primary.

A survey taken by Mervin Field's California Poll last March showed Younger far ahead of Davis and Wilson. (Maddy and Briggs were not included in the poll.) But that was to be expected because of Younger's name identification and the lack of activity by some of the other candidates at that time. Field will take another survey next month and

will follow that with six pre-primary polls next year. The September survey could be critical for Briggs. If he doesn't make a good showing as a result of all the publicity he has received as a leader in the anti-gay rights movement, he might as well quit.

Maddy has predicted that his campaign will follow the pattern of Jimmy Carter's successful out-of-nowhere drive for the presidency. But there is a significant difference between the two campaigns. When running for president, it is possible to build momentum by concentrating on key milestones — an Iowa caucus, a New Hampshire primary — where a superlative organizing effort can defeat a candidate with better overall name identification. There are no such milestones in a gubernatorial contest, no conventions in Madera, no primaries in Modoc. This makes the polls all the more important. They are the only real indicators of how well a candidate might be doing, and this gives a large advantage to the Youngers over the Maddys. Yet, there are those in Republican circles who feel that Maddy would make the best candidate for the Republicans — if he could only get the nomination. That's because he is a handsome new face, ideal for the current medium of political salesmanship, television. Put another way, his charisma factor is higher than that of any of the other candidates.

In an ordinary election year, the Republican primary would probably boil down to a contest between candidates representing the moderate and conservative factions of the party. But there is no longer any such thing as an ordinary election year, and labels mean less than images and personalities in television-era campaigns. (Supervisor Pete Schabarum has been giving indications he may try to run as a standard conservative. He has fair name identification as a

former Berkeley football star, and he has the benefit of a free ride.) Although there are many months left before the primary, it is already clear which path each of the five candidates will follow in an attempt to capture the prize of dubious value:

John Briggs. Even before he won his state Senate seat last year, the feisty, 47-year-old Briggs let it be known that he would be running for statewide office in 1978. He had a four-year term, a small bundle left in his campaign coffers and absolutely nothing to lose by running. He indicated that he might try tackling State Treasurer Jesse Unruh or Controller Ken Cory. But that's not much of an ego trip, and he saw an outside chance that he could win the gubernatorial nomination, because Davis was the only other conservative in the race.

A Briggs on the make can be a political wildman. He calls it "going for the jugular." Whatever the correct term, he knows how to irritate his enemies and create headlines. Briggs first jumped on the capital-punishment issue by announcing that he would not vote to override Brown's veto on Senator George Deukmejian's death-penalty measure, claiming it was not strong enough and that a better measure could be obtained by initiative. But that issue quickly moved into the background when Briggs saw a better opportunity — the anti-gay rights campaign of Anita Bryant. He went to Florida to join her crusade and then returned to California with a plan to float an initiative barring homosexuals from teaching in the public schools. If he is successful in getting the issue on the June ballot, it could be a meal-ticket to victory. Or his obvious opportunism could be visible to the voters and leave his candidacy where it was before the rash of publicity: nowhere.

Ed Davis. Briggs' candidacy figured at first to hurt Davis more than any other candidate. This is because Davis was the only conservative contender and had previously employed the gay-rights issue, objecting to the employment of homosexuals in his department and cracking jokes at the state Republican convention about the "United Fruit Workers of America." But the Briggs campaign, with its rough rhetoric, has made Davis look like a respectable candidate by comparison.

In television appearances these days, the 59-year-old Davis has been playing down his anti-gay attitude and emphasizing that even Mayor Tom Bradley of Los Angeles concedes that he is one of the top police administrators in the nation. Davis talks about his books — *Staff One*, an administration manual, and *Hang 'em at the Airport* (the solution to hijacking) — in an effort to show that he has much more to offer than a hard line against crime.

Davis says he is planning to retire soon, after more than three decades of police work, and he wants to put his talents to work straightening out the situation in Sacramento. His campaign is tied tightly to the operations of conservative state Senator H. L. (Bill) Richardson, who heads an organizational complex that raises funds to fight gun control and soft-on-crime politicians. Davis is about to test the political waters with a fund-raising appeal quarterbacked by Richardson's mentor, Richard Viguerie of Virginia. If Davis can raise enough money and can convince Republicans he has a moderate temperament to go with his conservative philosophy, he could be a major factor in the race.

Ken Maddy. At 43, perhaps Ken Maddy should be content to take a modest step up the political ladder, rather than shoot the works in a run for governor. He's been telling anyone who would listen for more than a year that he was running for governor, and no one seemed to believe him. How could a relatively obscure legislator from Fresno expect to woo the Republicans of the southern metropolitan areas against a household name like Evelle Younger?

From Maddy's standpoint, there are good reasons to be making a move. He cannot expect to rise to a top leadership post in the Assembly, and he faces a rough struggle every two years just keeping his seat in an overwhelmingly Democratic area. He has been building for the future shrewdly for many years, forging a political and economic alliance with the agriculture industry, making friends with the conservative element of the party by going all out for Ronald Reagan's presidential bid last year and building a solid moderate record in the Legislature. He has already been staked to a \$300,000 campaign bankroll, mostly by farmers, and is now trying to find ways to spend it effectively in Southern California. The problem is that it is too early to start buying television commercials, and by the time TV spots do the most good, it may be too late to build momentum in the polls. He desperately needs a gimmick to get his considerable assets before the southern public.

Pete Wilson. The mayor of San Diego, also 43, has been running for governor longer than any of the other candidates — virtually from the day he left the Assembly to take the oath of office in San Diego. He knew that eventually he would be able to run for the job without surrendering the mayor's office. Wilson has issued more press releases than any other candidate, attacked Brown more than any of the others, taken more public stands on issues and developed the most intricate campaign organization. With his youth and political base, he would be in good position to run again in 1982 should he make a good showing next year by winning the primary and keeping things reasonably close against Brown.

Wilson has his problems. His name identification is poor outside San Diego and he is suspect among some conservatives because he campaigned hard for Gerald Ford against Ronald Reagan last year. Also, he has made restrictions on growth the keynote of his San Diego administration. Yet, Wilson is a tough and experienced politician with a good organization. He has brought some key Reaganites into his corner and he has taken strong stands on issues affecting municipalities, such as property taxes and employee strikes. Like Maddy, Wilson would give the Republicans a young new face at a time when new leadership is desperately needed by the Grand Old Party.

Evelle Younger. Field's poll in March showed that Younger was far ahead of the field. And that's where he should be. He has served as a Los Angeles superior judge, district attorney for Los Angeles County and as attorney general for the past seven years. The attorney general's office, after all, was the stepping stone for Earl Warren and Pat Brown, and Younger's leadership of the Department of Justice has never been questioned.

Yet, no one seems to take it for granted that he will win the primary. The standard reason is that Younger, 59, looks



too old and too dull on television. One explanation may be that he is bored with his present job and needs a new challenge. (He has been a job changer all his life.) But the main reason seems to be that Younger made the biggest political error of his career by complaining that he was "flat broke" on his \$42,500 salary a year — even though he later said he was only fooling. The disclaimer didn't ring true, especially among those who had heard Younger complain about his financial condition for many years. Then came the revelation that Younger will be entitled to several government pensions (as a judge, district attorney, major general in the Air Force, and attorney general) totalling more than \$53,000 a year. In an era of protests against double dipping, this could be a prime campaign issue. There are some Younger friends who feel that the salary issue could eventually do as much damage to Younger as the "brainwashing" remark did to George Romney a decade ago.

Younger has developed a political following over the years that crosses normal political boundaries. Until the current campaign, he had been considered a friend of the environmentalists. Now, he is acting much like Jerry Brown in courting development interests. He also is one of the few Republican favorites of organized labor, and this could help him raise funds for the primary and win votes in the general election, if he gets that far. Younger also may be the beneficiary of an effort by some leading Republican financiers to prevent mayhem in the June primary next year — mayhem that would produce another Democratic landslide.

According to Martin Smith of the McClatchy Newspapers, Los Angeles automobile dealer Holmes Tuttle and other former members of Reagan's "kitchen cabinet" have all but abandoned hope of defeating Brown next year. All they want is a respectable race by a respectable candidate like Younger, so that the prospective number-two man on the ticket, entertainment impresario Mike Curb, will be able to defeat Lieutenant Governor Mervyn Dymally or any other Democratic nominee for the post.

Curb, the 32-year-old Republican national committeeman, is being groomed as the successor to Reagan — a show-business personality who can sell the conservative philosophy to the masses, including Democrats. The plan, according to Smith, is for the Tuttle group to develop a slate of candidates so that Curb can win even if all others lose. (Among those mentioned as possible slate candidates are Assemblyman Paul Bannai of Gardena for treasurer and Assemblyman Robert Cline, recently defeated in a race for Los Angeles county controller, for state controller.)

There are a couple of problems with this scenario. First, California voters would probably rebel against any king-making efforts, and Curb might get hurt by it. Secondly, it assumes that Curb could defeat either of two Assembly members who have been acting like candidates for lieutenant governor: conservative Mike Antonovich and moderate Dixon Arnett. Either of them would be much more knowledgeable than Curb on virtually any state issue, regardless of how well he was briefed. On the other hand, this is the era of television, and a candidate for lieutenant governor could probably be merchandised like phonograph records.

In the entertainment world, the Mike Curb Congregation consists of a group of singers headed by the potential candidate. In the political world, the Mike Curb congregation might be the candidate for lieutenant governor and his coterie of hand-picked losers. This could be the first election in California history in which the gubernatorial nominee was a stalking horse for his running mate.

The fact is that Republican prospects of beating Brown are so poor that the election of 1978 might as well be used to put some new merchandise on the shelves, for use in 1982 and beyond.

The Journal Bookshelf

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The \$42 million seeds of scandal in the Capitol reconstruction contract

By DAN WALTERS

"Although these are fine firms, this is the kind of thing where we've had scandals in other states." — Legislative Analyst A. Alan Post on January 12th, 1976, objecting to the lack of competitive bidding on the \$42-million project to restore California's 107-year-old Capitol.

"There's no way there's going to be any scandal on this job." — Architect John Worsley, in reply.

Eighteen months after that prophetic exchange, Post and Worsley find themselves principal figures in an intense controversy over how the Capitol restoration contracts were negotiated and awarded.

To critics, the project is a scandal and they have asked the courts to intervene. But to defenders, the whole thing is just a personality clash and a disagreement over procedure.

An objective examination indicates that the Capitol contracts contain the seeds of potential scandal — but to date no one has proven that anyone has, or would, profit unreasonably. The smoking gun, if there is one, has yet to be revealed. What remains — in the absence of any conclusive evidence — are many questions and enough unresolved conflict to last as long as the project itself continues. And that could be years.

Regardless of whether the courts inject themselves in future Capitol bidding, the Legislature itself — which owns the Capitol under a quirk of state law — has decided to undertake an investigation.

Post — whose reputation for integrity is as high as anyone's in state government — and Auditor-General John Williams have launched a joint investigation of the project that will culminate in a report this month. At the very least the report should be critical, because Post's reservations about the contract — and about Worsley — have been well-documented. Some believe that it could lead to the ouster of Worsley, the state architect under Governor Ronald Reagan, from the Capitol project.

While the prime construction contract with Continental-Heller Corporation of Sacramento and Swinerton and

Walberg Company of San Francisco is likely to stand, regardless of either court action or the Post-Williams report, the manner in which future subcontracts are awarded could be altered dramatically.

It is unlikely, however, that the Capitol controversy will have any direct political impact because the prime political figure connected with it, Leon Ralph, has left politics to become a minister in Sacramento. Ralph was a South Gate assemblyman who chaired the Joint Rules Committee and was a key figure in many of the decisions now being disputed.

The controversies are many but involve two main issues: (1) the manner in which fees and bonuses for the prime contractors were determined; and (2) the propriety of a section of the contract requiring the participation of minority-owned firms in major subcontracts.

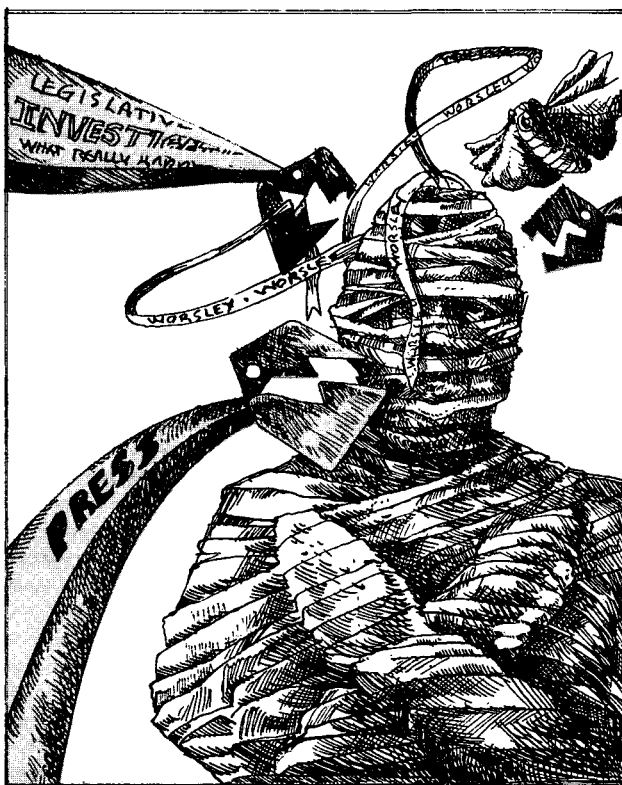
Born in a battle

The fact that California's golden-domed Capitol is being reconstructed at all is one of the side effects of a bitter battle for the Assembly speakership a few years ago. Had Democratic Assemblyman Willie Brown of San Francisco won the speakership instead of Assemblyman Leo McCarthy, another San Francisco Democrat, it is likely that the Capitol would have become, at most, a museum.

Brown carried legislation a few years ago that authorized construction of a new Capitol — possibly the so-called "Collier Towers" being pushed by then-Senator Randolph Collier, a

sometime political cohort of Brown's. But Brown lost the speakership to McCarthy, who favored restoration of the present Capitol, and Collier lost his power as chairman of the Senate Finance Committee and finally his seat. Collier Towers, which would have consisted of two 17-story office buildings separated by lavish new chambers for the Senate and Assembly, is now just a dusty plan on someone's shelf.

Collier had been trying to gain approval for his Collier Towers proposal for years, as an answer to growing needs for office space in the Legislature. The debate over the



Capitol began in earnest, however, in 1972 when the State Office of Architecture and Construction (OAC) warned that the Capitol — built of brick and mortar immediately after the Civil War — could collapse in event of a moderate earthquake.

Although earthquakes are rare in Sacramento, they are not unknown. A quake in 1892, centered near Winters, was felt in Sacramento. Newspaper accounts of the era say “the State Capitol rocked wildly and the inmates were panic-stricken. Several of the large statuary on the top of the building were thrown to the ground with such force that they were buried in the ground.”

The 1906 San Francisco earthquake also rattled the Capitol. The 1972 report said that the mortar in the building was crumbling and frequent remodeling had contributed to the structural deterioration. Iron compression rings that hold the dome together, for example, were chopped halfway through years ago for rain spouts.

The 1972 report came from Worsley, then the state architect, who painted a picture of catastrophe from fire, explosion and falling brick if an earthquake struck. The Joint Rules Committee, which is the housekeeping agency of the Legislature, ordered evacuation of the older wing of the Capitol after the report. Legislative offices were moved into the 25-year-old east wing and constitutional officers were moved to other buildings. A new vault was constructed across 10th Street from the Capitol so that State Treasurer Jesse Unruh and his hundreds of millions of dollars in negotiable securities could be housed safely.

Collier was serving as chairman of a Joint Committee on Legislative Space Needs when the architect's report was received and he began pushing for Collier Towers. Governor Reagan, however, let it be known that he favored restoration of the Capitol as a working structure, not just a museum. Collier finally abandoned his plan, and the elevation of McCarthy to the speakership sealed its fate.

A complex controversy

Ralph, as part of the political deal that made McCarthy speaker, became chairman of the powerful Assembly Rules Committee and automatically chairman of the Joint Rules Committee. Ralph's rise to power is part of the complex controversy that later emerged, for the Joint Rules Committee is in fact dominated by the Assembly — and senators have long complained that they are second-class citizens on the committee.

McCarthy and Ralph began pushing restoration within months after taking power. The Joint Rules Committee approved restoration in concept in April 1975, and pegged costs at \$42 million. Ralph carried the authorization bill and Governor Jerry Brown signed it after taking a well-publicized personal tour of the crumbling dome.

Worsley, meanwhile, had lost his job as state architect when Brown took over and named Sim Van Der Ryn to the position. But Worsley was retained by the new head of General Services, Leonard Grimes, to work exclusively on Capitol restoration. Worsley was later to be described in a memorandum written by a critical Senate staff member, Dan Visnich, as being Ralph's “hand-picked” architect. But Worsley and Ralph both deny that. Worsley says he had to compete with 12 other applicants for the job in a civil service test. Ralph claims he had nothing to do with the selection — that it was made by Grimes and that he agreed to the choice out of a sense of continuity. “He was a Reagan appointee, after all,” Ralph, a Democrat, says.

After Brown had signed the Capitol restoration bill, the task of choosing a prime contractor began. By late 1975, the choice had been narrowed to four firms or consortiums. Eleven firms originally had indicated interest in the project.

Ralph's legislation had specifically exempted the Capitol from normal competitive bidding procedures on the theory that since the exact scope of the work would not be known until demolition of the interior, no firm price could be proposed.

Lobbyists four

Plans called for supporting the exterior walls while the interior of the building was gutted. A new building, in effect, would be built inside the exterior walls, which then would be bonded to the new construction. A similar technique was used on the White House in the late 1940s. The restored building would be made of concrete and steel but would have a turn-of-the-century ambience. Experts on history and restoration were to be hired to make the building authentic.

All four of the finalists hired lobbyists. Each of the contractors claims he did so only because someone else started the practice. “It wasn't us who started it,” Michael Heller, chairman of Continental-Heller, insists. “All of them had contracted with lobbyists,” Ralph recalls.

Heller picked a powerful Capitol figure as his lobbyist: Ken Ross Jr. Ross' only other client is Santa Anita Consolidated, the Southern California racetrack, and Ross is considered to be one of the most influential power brokers in Sacramento. He was well-acquainted with Ralph from the latter's days as chairman of the Assembly Governmental Organization Committee, which handles all racing legislation. Santa Anita had been a frequent contributor to Ralph's campaign war chests.

What role, if any, the lobbyists played in the final selection of the Heller consortium remains unclear. Ralph insists that he refused to meet with any of the contractors or their agents prior to a marathon six-hour meeting at which Heller was chosen. “One or two of them tried to talk with me and I wouldn't meet with them,” Ralph says. “Ross and I did not meet.”

Heller insists that his motive in hiring Ross (at a fee of \$2,000 a month) was to bring someone into the picture who had had experience in dealing with legislators. “He was hired not to get the job but to help us during the contract,” Heller says. The contractor says he personally discussed the pending contract with only one Rules Committee member, Republican Ernest Mobley.

Each of the four final firms was invited to make a presentation to the full Joint Rules Committee, dealing with experience and techniques of restoration. No money was discussed. Under the legislation, the contract was to be negotiated after the committee chose a contractor. On October 15th, 1975, the committee chose the Heller consortium on a 6-4 vote, after tying 5-5 on Heller's prime rival, a joint venture of C. L. Peck of Los Angeles, and Nielsen/Nickles, Sacramento.

The lost minutes

Ralph was authorized to negotiate a contract with Heller. That authorization is one of the issues in dispute in the lawsuit. Did the authorization to negotiate carry with it an implied authorization to execute a contract without full committee approval?

Normally, the minutes of the meeting would help answer the question. But the minutes of that particular meeting — October 14th, 1975 — have been lost. Democratic Assemblyman Joe Montoya of Whittier, a member of the committee, filed an affidavit in defense of the contract, saying, “I was personally present when . . . Rules delegated to . . . Ralph the authority to negotiate and execute a contract with the selected contractor.” At any rate, Ralph says he did bring the negotiated contract back to the full committee. Although



no formal ratification vote was taken, Ralph says he asked for objections and heard none.

The contract was negotiated for the Legislature by Worsley, then-Legislative Counsel George Murphy and Gene Mansfield, the administrative officer of the Joint Rules Committee.

Heller calls it "a hell of a good deal for the state." But is it? Under the contract, the Heller consortium is to receive \$1.6 million to oversee the Capitol restoration project. That is supposed to be, in effect, the firm's profit on the job. But Heller also is to receive a portion of any savings from what is called the Guaranteed Maximum Structural Sum (GMSS) — in effect, an estimate of what the main structural work is supposed to cost. The GMSS is pegged in the contract at \$14.9 million, and Heller is to receive one-third of the first \$300,000 saved from that figure, scaling down to 20 percent of the fourth increment of \$300,000 saved.

That is a departure from normal contracting procedure, Auditor-General Williams maintains. He wrote a memorandum in April 1976, asking that the \$14.9 million figure be substantiated. If the GMSS is set too high, Williams warned, it could result in windfall profits for the contractor. But until recently, the Assembly leadership rebuffed Senate attempts to have Williams audit the project.

The \$14.9 million figure represents something of a compromise between what Heller wanted (\$17 million) and what two other estimators suggested. Worsley had contracted with two independent estimators to help him in negotiations with Heller. Lee Saylor Incorporated of Walnut Creek said the GMSS should be \$11.9 million. Another firm, Gosliner/McLean of San Francisco, pegged it at \$14.3 million. Worsley says the Saylor estimate miscalculated the amount of brick to be removed from the old Capitol, and he had more confidence in the Gosliner/McLean estimate, which was used as the basis for the final GMSS.

The minority clause

Ralph downplays the significance of the independent estimates, which are given heavy stress by critics of the contract. "I never saw nor was I interested in the estimates," Ralph says. "They were requested by Worsley as an in-

house control device, and I thought it was a good control device."

The Saylor estimate was withheld from representatives of the state Senate and Post's office. Worsley says he discarded them.

Another section of the controversial contract deals with minorities. It requires that minority-owned firms receive at least 20 percent of the dollar value of any subcontract of \$250,000 or more. Ralph insists that from the beginning the emphasis on minority participation in the job was a prime factor, well known to all participants. It was Heller's detailed plan for affirmative action that swayed Ralph to vote for the firm, he admits. "There was just no comparison (with Peck)," Ralph says.

Critics — including some members of the Joint Rules Committee — say that Ralph, a Black, inserted the minority clause unilaterally. "I didn't know he was going to go that far," one member of the committee said later, privately.

The first public hint of controversy on the Capitol project came last September when *The Sacramento Union* revealed the existence of the minority clause and the undercurrent of unhappiness among potential subcontractors who had to deal with it. At that time, only one major subcontract had been awarded: a \$400,000-plus contract for structural steel to Palm Iron Works of Sacramento. Palm's first bid didn't have minority participation and was thrown out. Its second bid, some \$41,000 higher, was accepted after Palm entered a joint proposal with Vargas Iron Works of Redwood City, a small, minority-owned firm.

A coalition of contractors and taxpayer groups, including the Sacramento Builders Exchange, brought suit to set aside the minority participation clause. The suit contends that the clause constitutes an illegal quota, in effect. The lawsuit was filed by Pacific Legal Foundation, a business-oriented law firm. It asks that the minority clause be stricken from the contract and that competitive bidding be used on all future subcontracts. Ronald Zumbrun, chief counsel for the foundation, says contractors fear that if the minority-participation clause is not stricken, it will be extended to other state jobs.

The prime evidence

Pacific Legal Foundation lost the first round in Sacramento Superior Court, where Judge Joseph Babich refused to issue the requested orders. While Babich was sharply critical from the bench of the procedures used in the Capitol contract — especially the secrecy — he indicated an unwillingness to interject the courts in legislative business affairs because of an uncertain situation regarding separation of powers. The matter is now on appeal before the Third District Court of Appeals.

The *Los Angeles Times* raised questions about the financial aspects of the contract in a series of articles by Larry Stammer beginning in March, based largely on a highly critical memorandum written by Senate staff member Visnich.

The memo, which later became a prime piece of evidence in the suit, complains at length about Worsley's alleged lack of cooperation with Visnich and about provisions of the contract dealing with the GMSS.

The *Times* articles noted that although the professional fee for Heller had been pegged at \$1.6 million, the runner-up contracting firm, C. L. Peck, had offered to do the job for \$700,000. The *Times* did not point out, however, that the offer was made in a letter to Ralph from Peck two days after Heller had been awarded the contract. "At that point it was after the fact," Ralph says.

Visnich, in his flurry of memos to Senate members of the Joint Rules Committee, complains that Worsley refused access to financial data and excluded him from the weekly

design meetings at which many of the day-to-day decisions on the Capitol project were made.

Visnich and Williams weren't the only ones with criticism. Post expressed reservations about the Heller contract when it was brought before the Public Works Board and has continued to question Worsley's competence. The internal and external criticism of the contract led Bion Gregory, the present legislative counsel, to ask the Joint Rules Committee to ratify, belatedly, the Heller contract in order to remove any legal cloud.

The ratification request was made in late May behind closed doors. One legislator said later it was presented by Democratic Assemblyman Louis Papan of Daly City, the new chairman of the Joint Rules Committee, as a gesture to avoid embarrassing Ralph. Several members of the committee refused to sign the ratification, however, and Papan had to twist some arms to get enough signatures on the document.

That session, part of which was conducted in the open, also featured some sharp criticism of Worsley by Post because Worsley and Gregory were seeking approval of a new method of choosing subcontractors. The new technique — aimed at points in the lawsuit — would have subcontractors chosen from a list of pre-qualified bidders. Post said he wanted someone other than Worsley to represent the Legislature on the pre-qualification panel.

A personality clash?

"Some of the judgments made earlier as to who was qualified on this project were in error," Post said, leaving no doubt he was criticizing Worsley. "There was, in effect, a subjective judgment made without ascertaining all the facts in the case. What I'm talking about is that, once burned, I'm shy about it and I want to be sure we don't get in that bind again." Post later added that he has "qualms" about Worsley. "I have felt judgments made by John Worsley have given me reason to think we ought to have somebody independent."

Ralph says he believes the criticism of Worsley stems

from the latter's brusque manner and a personality clash between the architect and Visnich. "Dan simply didn't understand what was going on," Ralph says of Visnich's complaints that he was being denied information. Ralph issued a memorandum at one point requiring, in effect, Visnich to come to him with any requests for information. "He has never come to me in compliance with that directive," Ralph says. Instead, Visnich wrote his lengthy memo setting forth all of his criticisms of Worsley and the Assembly side of the Joint Rules Committee.

Regardless of whether they are grounded in fact or mere personality conflict, the Visnich criticisms of Worsley are having an erosive effect on the architect's position. Just before the Legislature adjourned in June, for example, Worsley approached the Assembly and Senate contingents of the Joint Rules Committee separately, to ask for an exemption from competitive bidding for a relatively small (\$90,000) electrical subcontract. The exemption was required, Worsley argued, because of delays caused by the lawsuit.

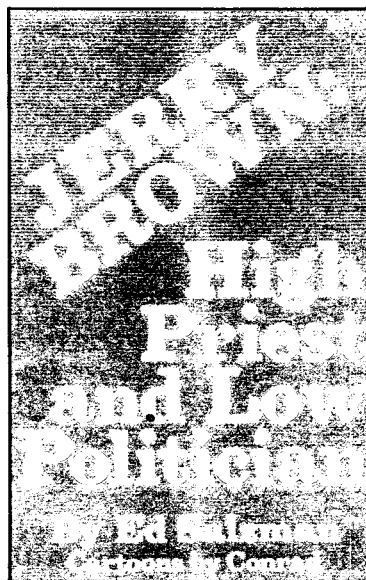
The Assembly agreed readily but it took an hour before the Senate agreed — and only after the senators ordered Worsley to solicit informal bids. The distrust of Worsley was evident throughout the caustic session. At one point, the senators refused to accept Worsley's assurances that Post's office had no objections to the procedure and sent for one of Post's aides to confirm it. Worsley was left red-faced and shaken by the interrogation by the senators.

After nearly a year of bitter debate, the Capitol project and its assorted contracts remain intact. The appellate court's ruling is expected this month, along with the Post-Williams report. But neither is likely to end the controversy. If anything, it will grow more intense, both within the Legislature and in the courts. It may continue for as long as the workmen are scrambling over the decayed shell of the Capitol. 

Dan Walters has written extensively about the Capitol reconstruction project for The Sacramento Union.

The book that distinguishes two shades of (Jerry) Brown

At one moment, Governor Brown seems to be advocating an antigrowth, era-of-limits policy; the next he is calling for industrial expansion. One minute, he is fighting the New Melones Dam; the next he is advocating the Auburn Dam. If you want to understand these two seemingly contradictory sides of the Governor, read **JERRY BROWN: HIGH PRIEST AND LOW POLITICIAN**, by Journal editor Ed Salzman. This Whole Brown Catalog, based on articles from the California Journal, contains car-



toons by Paul Conrad of the Los Angeles Times, some of Brown's most quotable quotes, his first two state-of-the-state addresses, a sampling of his pithy veto messages and photos of Brown in action. Anyone with an interest in California politics and government will want a copy of this attractive paperbound book.

Copies are available for \$3.13 each, including tax, from California Journal Press, 1617 10th St., Sacramento, CA 95814. Postage and handling are free on prepaid orders.

How our lawmakers rate: Still number one

By RICHARD RODDA

How does California's Legislature compare with those of New York and Texas or Nevada and Oregon? In 1970 the former Citizens Conference on State Legislatures (now called Legis-50) rated California No. 1 and New York No. 2. A year later I went to Albany to see for myself and came home convinced California deserved its superior ranking over New York.

This year I explored on a wider scale, revisiting New York and taking in the capitals of New Jersey, Pennsylvania, Maryland, Texas, Nevada and Oregon. This produced a comparison with three large industrial states of the East, a mighty Southwestern state and two neighbors. California still comes out first, as I see it.

The other states are trying to catch up but are far from closing the gaps. Openness of committee meetings, regulation of lobbyists, disclosures of campaign spending, conflict of interest laws and staffing for lawmakers are areas in which California is in the forefront. Absence of major corruption also is a plus for California.

In 1971 there was only one public hearing room in the huge Albany capitol. Legislative committees met secretly and the chairman had life-and-death power over most of the bills referred to his committee. Today the Empire State Plaza, a gigantic complex of state and legislative buildings, has about as many hearing rooms as Sacramento's Capitol. At long last meetings are open to the public. Former Assemblyman Daniel K. Haley of Waddington, in upstate New York, was one of the reform leaders. He made trips to Sacramento and went home loaded with ideas. The irony is that in 1976 Haley, a Democrat, was defeated. Some say he had gone too far in his reforms.

New York always has been in a race with California over legislative pay. This year the Empire State is No. 1 with \$23,500 as the basic pay for its 59 senators and 150 assemblymen. Legislative leaders are given extra pay, ranging up to \$21,000 for the president of the Senate and the speaker of the Assembly. Fringe benefits such as ex-

pense allowances and pensions are about even in the two states.

In trying to get a handle on lobbyists, none of the states visited has come close to California's strict regulation by the Fair Political Practices Commission. "Influence peddling is one of Albany's biggest businesses," Vic Ostrowidzki, political affairs writer for the *Albany Times-Union*,

**MARYLAND:
'PAYOFFS ARE A
PART OF POLITICS'**

**NEW JERSEY:
'CORRUPTION IS A
FACT OF LIFE'**

**NEW YORK:
'INFLUENCE
PEDDLING IS A BIG
BUSINESS'**

wrote recently. The rest of his article was a devastating criticism of failures to put meaning into the state's lobbyist reporting laws. Friends in New York reacted in disbelief when told that a California lobbyist cannot contribute to a legislative campaign and is prohibited from spending more than \$10 a month to influence a lawmaker during the session.

Cleaner than most

California also is comparatively scandal-free. In recent years a number of New York lawmakers have been indicted, and this year the chairman of the Assembly Ethics Committee, Democrat Alan G. Hotchberg, went to prison for attempting to bribe a potential opponent into not running against him in his Bronx district.

When it comes to scandals, New Jersey, Pennsylvania and Maryland are hard to beat. In New Jersey 150 public officials at various levels of government were indicted during a recent five-year period. Last year the presi-

dent of the New Jersey Senate was fined \$6,000 for paying illegal kickbacks in return for an exclusive contract for his liquor firm.

"Political corruption is a fact of life," states Thomas Cannon, public information officer for the attorney general. New Jersey defenders say the state gets a black eye because of aggressive prosecutions. This, they contend, should be to the state's credit, hinting that corruption is as prevalent elsewhere but is seldom exposed.

Maryland also has its share of corruption. One official boasted recently that 1977 is a good year because only one of the state's 188 legislators was currently under indictment. There is also the unresolved indictment against Governor Marvin Mandell, who is charged with fraud in a scheme involving favorable consideration for a race track.

There seems to be a strange reaction in Maryland to former Vice President Spiro Agnew. Several persons said they were not much offended that he was on the take as a Maryland County executive ("It's the way of politics."), but that when he continued to receive construction industry payoffs while serving as vice president, "this was outrageous."

In Pennsylvania the Democratic speaker of the House of Representatives and a state senator were under indictment this year on charges of extorting money from parents in exchange for obtaining entrance for their children into professional schools. In Harrisburg they still remember the scandal of the century, when the new capitol, built in 1906, was furnished with fixtures loaded with lead by a contractor who was being paid by the pound.

Maryland legislators were proud this year as they took up the so-called sunshine bill, requiring open meetings of public agencies. "It would take a Sherlock Holmes to find out when and where some of our boards and commissions meet and what they do," observed one lawmaker. By contrast, California's Brown Act requiring open meetings has been on the books 24 years.

Texas, Nevada and Oregon have biennial legislative sessions — something California did away with in 1948.

Richard Rodda recently retired as political editor of the McClatchy newspapers.

It would seem Texas at least — the fourth most populous state — should have annual sessions. But the voters have repeatedly turned down proposals for annual sessions as well as proposals for salary increases. Texas legislators receive \$7,200 a year in salary and, for expenses, only mileage to and from the capitol. The biennial session is limited to 140 days, which means the fiscal experts must budget two years in advance.

Like other states, Texas has wrestled with the problem of political campaign reform. Legislation placing a limit on the total, but not individual, contributions to political campaigns has been enacted. Critics say the new law has done little to control spending and that in 1974 \$3.4 million went into the campaign of Governor Dolph Briscoe, whose election was a foregone conclusion.

Texas is run by conservative Democrats who have been in power since reconstruction days. Floor debates are filled with phrases like "states' rights," "local control," "right to bear arms," and "What will this cost my district?"

In front of the capitol is a statue honoring the Confederate dead. The inscription says the Southern soldiers gave their lives in defending the principle of states' rights.

A gambling spree

New Jersey has just authorized casino gambling for Atlantic City and other Eastern states have lotteries, bingo, off-track betting — you name it. The East seems to be on a gambling spree. Not so for Texas, where the voters rejected parimutuel horse race betting in the last general election.

Nevada, on the other hand, is dependent upon gambling. About 45 percent of the state's general fund revenue comes from various gambling taxes. There are no personal income taxes, corporate taxes or gift taxes in Nevada.

Many outsiders wonder whether the state is run by the gamblers. They have a low-key lobbyist group, but one prominent senator reported contributions of \$1,000 to \$10,000 each from a half-dozen gambling organizations last year. Nevada has a new lobbyist reporting law, very weak by comparison with California's. "I threw California's Proposition Nine at them at a committee hearing and you could hear them gasp," said a state official. "Whenever California acts, Nevada reacts."

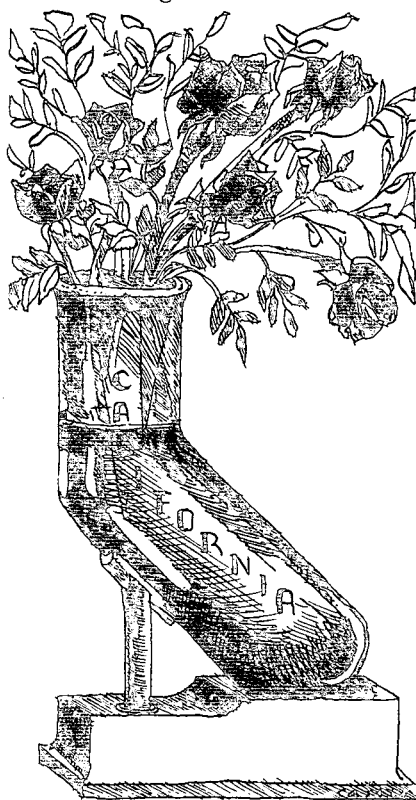
Nevada is much more conservative than California. Like Texas, it has a right-to-work law. Nevada rejected the Equal Rights Amendment.

Along with Alaska, Nevada has the smallest state legislature, with 20

senators and 40 members of its lower house. They are the 15th lowest paid, receiving \$3,600 over a two-year period and \$40 a day while the legislature is in session.

The unpredictable one

Oregon is unpredictable. For years it was under Republican control and now the Democrats are in charge. But the Republicans in some cases are as progressive as the Democrats. Senator Mark Hatfield and former Governor Tom McCall, still thinking about a comeback, are out of step with the conservative image of the GOP.



This is the state that has its bottle bill requiring deposits on beverage bottles and cans. Polls indicate nearly 90 percent of the citizens favor it. The state has decriminalized marijuana, a step California has shied from, and repealed capital punishment in 1964. It is not about to join the parade of states, California included, that are reinstating it. Oregon has a state ombudsman to receive citizen complaints and, like California, has taken steps to control lobbyists. The Oregon Government Ethics Commission enforces the new (1975) conflict of interest law and registration of lobbyists. A lobbyist who spends in excess of \$25 in one day on a legislator must identify the recipient. This is a far cry from California's tough \$10 a month limit, but it has had an impact.

Oregon lawmakers receive \$250 a month in salary on a year-round basis, \$175 a month for expenses and \$39 a

day living costs while in Salem. This averages \$10,000 a year, including miscellaneous fringe benefits.

Oregonians are proud of their political independence. They point out that in the 1964 Lyndon Johnson landslide the Republicans made gains in the state legislature. In 1976 the Democrats took control of the legislature, at the time President Ford defeated Jimmy Carter in the state.

The California effect

There is no question but that California has had an influence in shaping the legislatures of other states. In New York, for instance, I was asked about Jesse Unruh, former speaker of the Assembly who is credited with "professionalizing" lawmaking in California.

Here are a few general observations about the legislatures of the seven states:

- **Lawyers have their built-in lobby everywhere.** The legal profession is the best represented occupation in all legislatures — sometimes with nearly half the members of one house or the other.

- **Democrats control both houses** of six of the seven states visited. The Republicans have a majority in New York's Senate. All states have Democratic governors.

- **Blacks and women are more numerous** than they used to be in all legislatures, running about even with the California lineup: two Blacks and a woman in the Senate; six Blacks and five women in the Assembly.

- **There is a familiar ring in legislative parlance everywhere.** "All this bill does . . ." is the unctuous approach of a legislator who wants to avoid controversy, whether in Annapolis or Sacramento. "These are merely technical amendments," fits into the rhetoric in New Jersey or Texas.

- **Capitol buildings are much the same.** Pennsylvania's capitol in Harrisburg and Texas' in Austin are more spacious and bring more of the legislative leaders under the dome itself than do the others. Sacramento's Capitol Park is unexcelled for beauty. Albany's \$1 billion mall, built by Nelson Rockefeller, brings nearly all state offices into one gigantic complex.

Californians should be proud of the fact that one must go back to the 1950s to find a major legislative scandal. Then two former Assembly speakers and an assemblyman were indicted as the aftermath of a liquor license bribery scandal. There have been a few conflict of interest investigations and one near-bribery case in recent years, but nobody has gone to prison.

A highly fictional account of California's GREAT DROUGHT

WATER!

IF YOU ASK ME, IT'S NOT SO GREAT

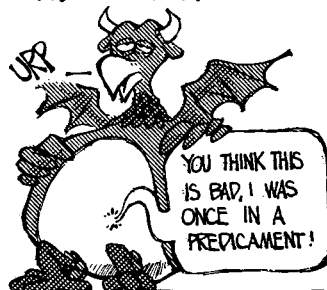
BEFORE

AFTER

by JUDGE

ONE DAY IT DIDN'T RAIN. (ACTUALLY IT DIDN'T A LOT MORE THAN ONE DAY, BUT STORIES & DROUGHTS START THAT WAY.)

THE PEOPLE WERE IN A QUANDARY...



SOME SAID...

IT'S GOD'S WRATH ON A WICKED STATE!



OTHERS SAID...

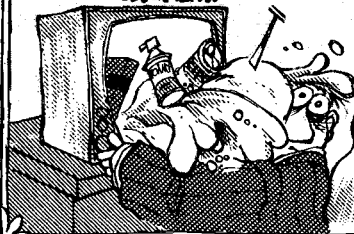
NONSENSE! IT'S A HIGH PRESSURE FRONT... ON A WICKED STATE



BUT WHAT HAD THE STATE DONE THAT WAS SO WICKED?

WELL TELEVISION WAS BASED THERE...

THEY INVENTED SNOG...



THEY HAD AN ENVIRONMENTALIST GOVERNOR WHO WANTED TO BUILD DAMS ON TOP OF WOODCHUCKS...



THIS IS AN ERA OF LEMMINGS

THEY SUPPLIED A HIGHLY SUSPICIOUS PRESIDENT...



AND SOME CONGRESSMEN WHO HAD NO TROUBLE ORDERING IN A KOREAN RESTAURANT!



THE PEOPLE REALIZED THEY'D SINNED & SENT A LOUD WAILING UP TO THE HEAVENS. MIRACULOUSLY AN ANGEL APPEARED AND SAID...



MR BIG'S TRYING TO SLEEP. HE SAYS IF YOU GUYS DON'T TOE THE LINE, HE'LL TURN THIS STATE INTO A VAST WASTELAND, FILLED WITH STRANGE PEOPLE AND YOU WON'T BE ABLE TO GET A DECENT BURGER EITHER !!!

DID THE PEOPLE CHANGE THEIR WAYS? WELL THAT'S YET TO BE SEEN, BUT THERE'S A GOOD CHANCE OF IT. AFTER ALL, WHO WANTS TO LIVE IN UTAH?

An icy reception ahead for the state's new water plan

By GEORGE BAKER

The business-as-usual days — when California could freely tap the federal treasury for bigger and better water projects — are coming to a jolting halt under the Carter Administration.

The President's move last February to eliminate 19 projects from the budget, including the giant Auburn Dam near Sacramento, was originally interpreted as the misstep of a new President relying on the poor advice of some eager-beaver environmentalists.

At least that's what California's powerful water establishment thought. After all, no President would dare touch Congress' most cherished ritual — the annual showering of public works dollars on its constituents.

But in the months since, Carter's determination — not only to trim the fat from the pork-barrel budget but to make some sense out of the way westerners use water — has increased dramatically. All this has come as a shock to California's water promoters and some of the state's congressmen who are paddling against the Carter current.

Perhaps more than any other state, California has a large stake in the outcome of the nascent reform movement that apparently has overtaken not only the Carter people, but a substantial part of Congress as well. Water has always been the state's key to providing for breakneck population expansion, a bounteous farm economy, a strong industrial base and a carefree lifestyle. Water also has triggered intrastate jealousies, regional conflicts, social disputes and intense personal feuds. And always hovering in the background has been the federal government which has dammed, ditched and diverted water from the Oregon border to the Mexican border — taking it from where it is (in Northern California) and delivering it southward to where it is needed.

California has defied the laws of gravity and regional politics to construct two engineering monuments: the federal government's Central Valley Project (CVP) and the State Water Project. But now — as the unfinished Auburn Dam sits precariously atop an earthquake fault — the breeze of reform is blowing gale-force through the dusty offices of Washington bureaucrats and congressmen.

The biggest casualty?

The biggest casualty could be the \$3.5 billion federal-state project promoted by Governor Jerry Brown to help meet the state's water needs through the year 2000. The program — which would cost the federal government roughly \$2.5 billion — has a little something for everyone: wild rivers for conservationists, more irrigation water for San Joaquin

IF CALIFORNIA
REALLY WANTS THE
AUBURN DAM
PROJECT REINSTATED...

THEY SHOULD REDESIGN
IT USING A PROVEN
ENVIRONMENTAL
DESIGN...

WHY THAT'S
HOW TO BUILD
A DAM!



Valley farmers and the Peripheral Canal for Los Angeles.

A portion of Brown's plan would be an addition to the \$3 billion state project, an achievement engineered 17 years ago by his father, Edmund G. Brown Sr. But the bulk of the proposal envisions a large addition to the already financially strapped CVP, operated by the Bureau of Reclamation. The plan would require unprecedented cooperation between the federal and state governments in the operation of the two systems.

The program has already received the endorsement of the state Senate and now awaits a tougher fight for approval in the Assembly, which will take it up this month. But in Washington, where the largesse is located, it is an altogether different story. Any semblance of unity among the California congressional delegation — a prerequisite to congressional authorization — is lacking. And besides, the Carter Administration doesn't appear to be in any mood to throw \$2.5 billion at any one project — especially one located in a state whose governor has proved to be as nettlesome as Jerry Brown.

The men and women who make water policy delight in the irony that it was Brown, the presidential candidate last year, who soothed his audiences with vague references to an "era of limits" and our journey on "spaceship earth." Now, a year later, he is just another politician, they say, emulating his father as the promoter of another dam-and-ditch scheme.

By contrast, Carter is scorning the traditional ways of politics and refusing to trade water projects like pieces on a Monopoly board. Although he hasn't commented publicly yet about Brown's proposal, any water project as ambitious as Brown's can expect some rough treatment in the current climate.

Carter has ordered a top-to-bottom review of all govern-

George Baker is a Washington correspondent for the Sacramento, Fresno and Modesto Bees.

ment water policies, including a reevaluation of the economics used to justify projects, a thorough safety reform program and more attention to environmental impact.

Moreover, he wants project beneficiaries — homeowners, farmers, water districts — to bear a bigger share of the costs. And he wants more emphasis on water conservation, better water management and waste water reclamation. Only in the past two years of drought has California taken seriously the need to conserve water.

The man carrying the burden for Carter is Interior Secretary Cecil D. Andrus, a former Idaho governor who has proven to be as tough-minded as Carter — and even more outspoken. Recently, for example, he said in a speech, "As a westerner, I grew up with the ideology that dam building was good per se. But somewhere along the line we lost sight of what reclamation is all about. It is improving life, not destroying it. It is not dam building for the sake of building more dams.

"Streams and rivers have other values than just for electrical power generation and irrigation and transportation," he continued. "We need free-flowing water left in the nation for many reasons — including the protection of certain forms of life, for recreation, for scenic values, for maintenance of our tenuous link for modern man and his natural world."

Those are not the kind of words normally used by secretaries of Interior. It's possible, in fact, that Andrus' words were penned by one of the more than dozen certified environmentalists who have been lodged in top-ranking policy positions in the department.

Such words are anathema to the veteran California congressmen who have been fighting for more water development ever since they got to Congress. Democratic Representative B. F. Sisk of Fresno, looking out for his San Joaquin Valley constituents, derisively refers to the new leadership "downtown" as "60-day wonders," a nickname he also hangs on the junior House members who support Carter's hit-list of water projects.

Representative Harold T. (Bizz) Johnson of Roseville, chairman of the Public Works and Transportation Committee, is not optimistic that Brown's proposal or other new projects will be well received in the House. After all, he ruefully points out, "We're having trouble getting money for projects already authorized."

To a man, California's "water congressmen" say it will be all but impossible to get congressional approval of any state project until there is some unity in the delegation, an unlikely prospect for the foreseeable future.

Leader of the opposition will be Representative George Miller, a Democrat from Contra Costa County, who is guarding the interests of the Sacramento-San Joaquin Delta. These interests fear that Brown's Peripheral Canal proposal will allow the delta to be irreparably damaged so that swimming pools in Los Angeles can be filled.

Miller, along with Phillip Burton of San Francisco and John Krebs of Fresno, serves on the Interior subcommittee which would have to authorize the state package. And while he says he will not act as an "obstructionist," and wants a complete inventory of the state's water needs, he is clearly gunning for the program.

Brown, he says, is "putting the cart before the horse," developing water for undefined future needs, while threatening the delta estuary that is used for farming, fishing, wildlife protection and industry.

A vote to remember

In mid-June, the water promoters from California and other states were shocked when a proposal to eliminate 17 projects, with an overall cost of \$2.2 billion, was barely beaten on the House floor, 218-194. The vote demonstrated that Carter had the votes necessary to sustain a veto of the bill and it was indicative of the changing attitudes toward such projects.

For California, the vote was even more illustrative of some alteration in political thinking. Of the state's 29 Democratic congressmen, 13 sided with the President — knowing full well they were inviting retribution the next time California had a major project under consideration.

Brown's proposal suffers another handicap: its enormous cost. There already is a backlog of \$34 billion worth of projects which either have been started or authorized by Congress, according to Andrus, who wants to trim the figure considerably. California's plan would be the most expensive single-stage project ever constructed by the Bureau of Reclamation, dwarfing the \$1.8 billion Central Arizona Project.

In their quest for help, Brown Administration officials have been courteously received by Interior officials. But the officials admit to some bewilderment that anyone would think the \$2.5 billion federal share could be seriously proposed in today's climate. "It is a lot of money," Assistant Interior Secretary Guy R. Martin says with some understatement.

There is still another recent development that could have a significant impact on the future of the state's water program. Under a little-noticed bill fashioned by Miller and Sisk, Andrus has appointed an 11-member task force to investigate the operations of the Westlands Water District and, by implication, the entire CVP.

Much of the adverse publicity generated by Westlands in the past three years has involved changes of nonenforcement of federal laws intended to create family farms in the 600,000-acre area. But the task force, given a broad mandate, will look at a number of other areas, including water management policies of the bureau and its financing of CVP.

While Andrus has said he plans to enforce reclamation laws intended to put family farmers in the Westlands district, the task force will have to grapple with a lot of other issues. For example, should water priorities between farmers and city dwellers and water quality enhancement be shifted? Can the federal government legally commit more water to the protection of the delta? Is there enough water to satisfy all demands? If not, who will have to bear the burden of possible future cutbacks? What is the true cost of delivering water to millions of acres and thousands of homes? Would additions to the CVP plunge it further into debt?

These are the kinds of questions the task force will seek to answer and some of them may not mesh too well with Brown's proposal. Jerry Brown said earlier this year he hoped that his water program could be authorized by Congress this year. At the rate things are going, he'll have to revise his schedule considerably.

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Charles Warren, the strong ecologist voice in the White House



By MICHAEL D. GREEN

When the Auburn Dam recently landed on President Carter's "hit list" of threatened water projects, Governor Jerry Brown and U.S. Senator Alan Cranston pressed hard to restore funds for the project, pending the outcome of safety studies underway. Adding his clout to their cause was Representative Harold T. (Bizz) Johnson of California, the new chairman of the powerful House Public Works and Transportation Committee.

But it was another Californian — not Brown, Cranston or Johnson — who was summoned to the Oval Office just before President Carter made his final decision on each of the 30 projects called into question.

That man was former Assemblyman Charles Warren, who left Sacramento this year to become the new head of the President's Council on Environmental Quality (CEQ). In that role, Warren has suddenly acquired more influence over California's environmental future than he could ever have exerted in the job he left, as chairman of the Assembly's Resources, Land Use and Energy Committee.

The key to his new power is that Warren appears to have the confidence of the President — and is becoming his chief adviser on all environmental policy matters. When Warren left the Oval Office to walk back across Pennsylvania Avenue to his renovated townhouse-office overlooking Lafayette Park, the Administration position had held firm. There will be no more money for Auburn until the earthquake hazards study is completed — and not then if the study shows grave risks in proceeding with the project as presently designed.

It is scarcely novel, of course, that the President would meet with his chief environmental policy adviser on such

matters before making up his mind. What is perhaps more indicative of the extent of Warren's potential influence is the fact that he's got strong feelings on many environmental issues and isn't afraid to make his feelings known — regardless of whom they offend.

Elaborating on the Auburn Dam question, the normally mild-mannered, affable Warren fairly explodes: "Why, it's not safe! *It's not safe!* . . . I just don't understand how Senator Cranston can take that position! . . . Just *stupid!* . . . Fiscally irresponsible! . . . Waste . . ."

He feels equally strong on another issue guaranteed to offend Representative B. F. Sisk, veteran member of the powerful House Rules Committee. In a speech delivered recently in Sisk's Fresno congressional district, Warren attacked the contractual arrangements between the Bureau of Reclamation and the Westlands Water District, and charged that taxpayers are thereby subsidizing huge corporate agribusinesses to the tune of one and a half billion dollars.

Working with Carter

In his dealings with the President, Warren acknowledges that Carter doesn't always follow his advice. But on balance, he observes with obvious satisfaction, CEQ "came out very well" on its "hit list" recommendations to Carter.

The nature of Warren's advice, and his view of future water project construction, were spelled out in a speech to the National Wildlife Federation in Washington last March. He called his address "Subsidizing Disaster" and in it he denounced "blatant boondoggles" and vowed "to turn federal water policy around . . ."

"In my home state of California," he said, "we have been damming and diverting rivers, irrigating and developing land on an increasingly large scale since the turn of the century. We have made the desert bloom — but at a price."

Warren specifically rejects the argument that the answer to drought or floods is more and more construction. "Dams and reservoirs seem the answer, and it's politically difficult to postpone them when your constituents are threatened — either by too much water or by too little," he says. "But none of the suspended projects will help us out of these difficulties. Of the 19 projects first delayed by the President, several had not gotten beyond the planning phase, most were less than five percent completed, and only three were 20 percent or more completed. Our droughts and our prospective floods will require much faster help than these projects can provide."

He also rejects a second justification frequently used to promote additional water projects — that they create jobs. "To some degree, they do," he says, "but the amount of this benefit to local communities is vastly exaggerated, and totally out of proportion to the amount of public investment required . . . Dams are built with enormous machines run by relatively few specialists earning salaries on the order of \$25,000 and up. These specialists are typically imported from outside the community — often from outside the state. Pick-and-shovel labor, when it is needed, attracts transient workers from the cities. Their sudden descent on a community creates overnight demands for public services ranging from waste treatment and medical care to a beefed-up police force . . .

"If it's jobs we want, let's provide jobs. Water-project construction is one of the most expensive, least labor-intensive ways to create employment. Every billion dollars' worth of Corps of Engineers construction, for example, creates about 65,000 jobs; that same billion dollars put into waste treatment construction would create 85,000 jobs. And a billion dollars put into national health insurance would create 102,000 jobs."

Commitment or clamor?

The fate of the massive state water plan currently being pushed by Governor Brown may be determined by Warren's general philosophy on water projects: "What we really need is a firm national commitment to a strategy of resource management, rather than the continuing clamor for more projects to sustain our wasteful, harmful water habits."

Warren acknowledges the political difficulties of persuading Congress to reverse water policies he regards as outmoded and foolish. "My guess is that in every congressional district there is a substantial group of citizens who believe the myths about the economic benefit of large-scale water projects. And there is a much smaller group, composed of a few people who will benefit from federal construction. They own large parcels of land, they own banks, they own construction companies. Though their numbers are not significant, their influence is — because they know their way around Washington. And they are vocal."

"If we are going to turn federal water policy around, we are going to have to stop talking to each other and solicit the support of all our fellow citizens — hard-hats and businessmen, teachers and cops, typists and senior citizens — whether they consider themselves environmentalists or not. We have got to convince them that this nation must stop thinking of water, and other life-sustaining resources, as an infinite resource, one that can be pulled out of the ground and the skies indiscriminately, pumped and diverted anywhere we like. And we must convince them that water and resource policy is not the exclusive preserve of legislative specialists, engineers and water commissioners."

"Water and other life-sustaining resources are everybody's business. This is our common life we're talking about: the preservation of our soil, the protection of our food supply, the maintenance of natural systems that have kept this vast, magnificent earth healthy for thousands of years."

Getting acquainted

After a few months on the job, the early signs are that Warren stands every chance of expanding both CEQ's role and his own influence in the direction he hopes. He has spent a good deal of time getting acquainted with persons, at the White House and elsewhere, with whom he will be dealing. Two of the figures who have impressed Warren most, personally and professionally, are Interior Secretary Cecil Andrus and Environmental Protection Agency Administrator Douglas Costle. Warren thus may not be a voice alone in his approach to federal water policy.

Unlike previous presidents, Carter seems intent on making full use of CEQ and has assigned it a number of projects close to his own heart. He has involved it in everything from his efforts to confront the spectre of worldwide plutonium proliferation to directing an interagency effort to curb toxic substances in the environment. CEQ has been assigned to conduct its own hearings and make its own recommendations on how to transport natural gas from Alaska to the continental U.S. in the most environmentally sound manner. It has been monitoring negotiations in the tuna-porpoise controversy. Carter has assigned it the task of finding ways to simplify environmental impact statements.

CEQ's statutory responsibility — to monitor the compliance of all other governmental agencies with the provisions of the National Environmental Policy Act — and its role as overall environmental policy adviser to the President gives it a voice in almost every environmentally related government question, even though CEQ itself does not administer or regulate.

"CEQ has served under administrations that in recent years have had no interest in the environment," Warren observes. "President Carter has lots of interest in the field and I look forward to expanding the council's role, so that it will be able to identify crises that may face us 25 years from now."

He is reassured by his working relationship with Carter so far: "Not only do we have access, but I'm pleased with the extent of the access the President has given," Warren says. "Every memorandum we send we know is examined by the President. They invariably come back with his (handwritten) comments, his personal reasons why not, or to hold off . . ."

The President's choice of Warren to head CEQ still is something of a mystery to Warren himself. But the importance attached to the appointment by Carter may be judged in part by the fact that after being hastily summoned to Washington, Warren was offered the job in an Oval Office meeting with the President just after the finish of the inaugural parade. When Carter unveiled his first environmental message to Congress four months later, it was Warren who conducted the White House briefing on the program, assembled under his auspices. There are no indications that the President so far is anything but pleased with his new CEQ chairman.

When Warren took office, his wife, Audrey, presented him with a small plaque, which reads: "I'm not here to preside over the demise of CEQ or of the environmental movement in this country." It might well have added the words: ". . . or in the State of California."

Michael Green is a free-lance writer who has specialized in California politics.

THE DREADED 'BLACK HOLE'

How safe are LAX and other California airports?

By ROBERT B. TUCKER

You know the feeling. You're strapped into your seat in a sleek jet aircraft about to take off. Suddenly you find yourself perspiring a bit and gripping the armrests. You know that air travel is safe, but you can't help wondering whether this flight will be "the one." As the powerful engines whirr faster and faster, you notice that the other passengers have become quiet. They know, as do you, that the takeoff is one of the more dangerous portions of any flight. But before long, the plane whips down the runway and lifts into the air.

Despite the fact that air travel is at least 15 times as safe as automobile transportation, scenes of air tragedy become engraved in our minds. Every time a disaster occurs — such as the collision this March of two 747 jumbo jets in the Canary Islands, killing 265 Californians and 312 others — the issue of airline safety is again raised in the public mind. For Californians, there was added concern recently when the International Federation of Airline Pilots (IFALP) announced that the Los Angeles International Airport is one of the least safe airports in the world.

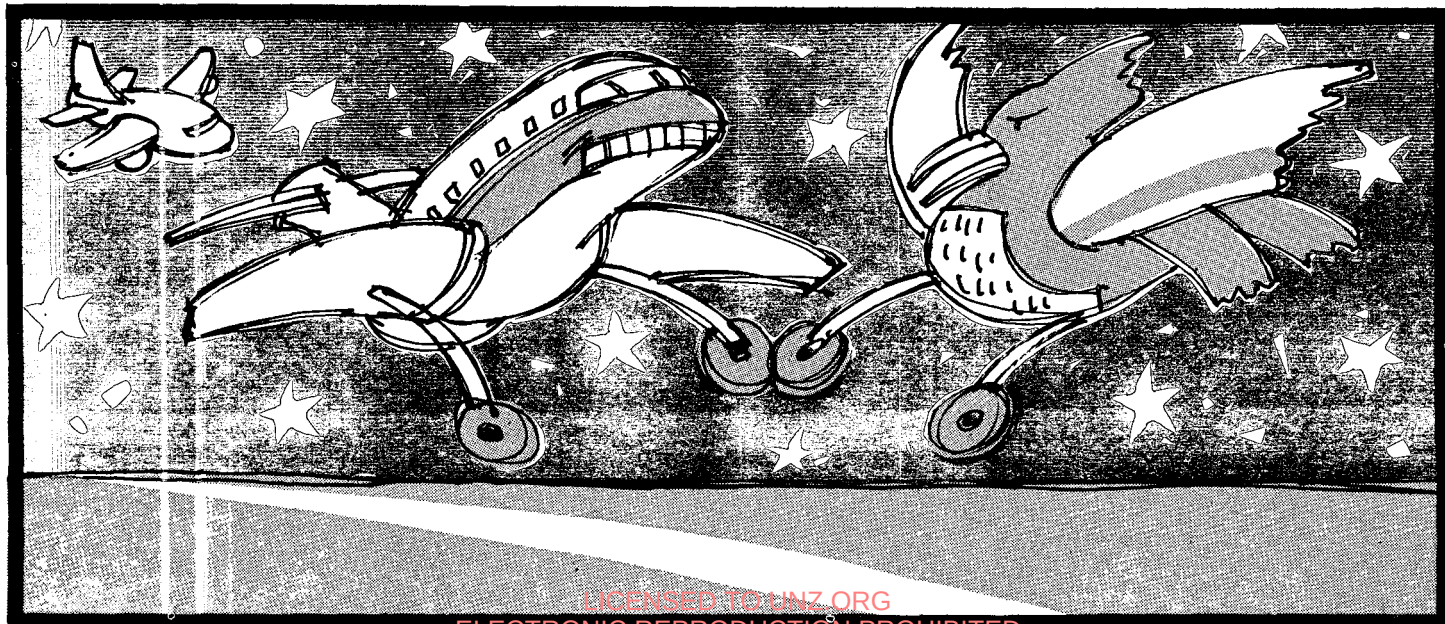
Is the Los Angeles airport as dangerous as the pilots' proclamation sounds? Or was the association using the LAX rating as a public-relations stratagem to get some particular project funded? In fact, LAX has an excellent safety record, and the Federal Aviation Administration (FAA), which has the responsibility for insuring airport safety, sides with Los Angeles authorities in their dispute with the pilots. (All airports receiving federal grants come under FAA jurisdiction, including 35 facilities in California. The FAA operates the control towers at these airports.)

California's airports are among the busiest in the nation.

Last year, the Los Angeles and San Francisco airports handled a combined total of more than 45 million passengers. The Los Angeles airport is not the only one in California that has been under criticism. For years there has been a controversy in San Diego about Lindbergh Field, which is extremely close to the downtown area. Also, there have been proposals for improvements to other airports. The following is a consensus of what pilots, airport administrators, and FAA officials have to say about the element of safety at the state's seven largest airports:

Los Angeles: This airport is undoubtedly the most controversial one in the state. Pilot organizations, most notably the Airline Pilots Association (ALPA), strongly object to the airport's nighttime noise abatement rule, which requires jets to take off and land over the Pacific Ocean. The lack of lighting over the "black hole," as pilots refer to the Pacific, makes approach navigation more difficult. Landing downwind, also required at night, is considered by aviators to be bad practice, since it increases the amount of time necessary to stop once the plane lands. Pilots also dislike the opposing traffic flow during landings and takeoffs, because of the increased likelihood that two planes may stray into each other's paths. Fog in the early morning hours often forms over the approaches, increasing the potential for such an accident. The only exception to the noise policy — in effect between 11 p.m. and 6 a.m. — is when the wind exceeds 10 knots. Pilots feel they should have final say about landing during inclement weather.

The noise-abatement rule resulted from the airport com-



mission's response to citizen complaints. The FAA supports the noise rule; it says that representatives of ALPA were in on the planning and originally endorsed the proposal. The airport will soon begin work on a \$9.6 million, federally funded noise buffer zone project, but it is not known whether the Airport Commission will alter the nighttime landing procedure once the project is completed.

San Jose: Strategically located at the south end of San Francisco Bay, in an area with relatively little fog, this airport is a popular alternative during bad weather conditions. Since opening in 1948, this airport has not had a single crash of any of its scheduled airlines. Pilot organizations and airport administrators would like to have more sophisticated visual approach lighting systems installed on the runways. But such installation is a responsibility of the FAA and has not been budgeted for the current year. Due to the state's recently imposed noise standards for airports, San Jose is currently purchasing residential acreage south of the airport, and this should contribute to overall safety as well.

Oakland: This airport can boast of owning some of the most sophisticated crash and rescue equipment in the nation. But it's much more likely to have to call out its bird patrol than its fire trucks. Because of its proximity to the marshlands of the San Francisco Bay, the congregation of birds around the airport is a constant concern. At times, flocks of birds on the runways force the airport to shut down temporarily, while special crews scare them away. A bird strike — which officials say occurs at least two or three times a year — can seriously damage an airplane or cause it to crash. The Airline Pilots Association wants Oakland to upgrade its approach lighting system, but, as in San Jose, these improvements are in the future.

Sacramento: Built in the early '60s, this is the newest major airport in the state and is often pointed to by FAA officials as a model for others across the country. Its designers tried to avoid the mistakes made at other large airports, plagued by complaints of excessive noise and incompatible land use in adjacent areas. Consequently, the city and county of Sacramento located their airport on a 3,600-acre parcel north of the city. Soon this will be doubled to almost 7,200 acres.

Early opponents of the rural site warned of the likelihood of problems with birds and fog, but generally these haven't been serious. Although fog sometimes closes in during winter months, Sacramento's airport is perhaps the safest and most efficient of any in the state. Nevertheless, ALPA has recommended that Sacramento install additional distance-measuring equipment for approaching airplanes, and only now is the facility installing the standard Instrument Lighting System (ILS).

San Francisco: This airport has the unique feature of being capable of landing planes during zero-visibility weather conditions — the only one of its kind in the West. Like other airports on the coast, SFO's runways swing out over water. But in contrast to Los Angeles, jets arriving and departing are at right angles to each other. Inside the San Francisco pattern, airplanes are constantly monitored by radar, both in the air and on the ground. The airport commission recently approved the installation of four new runway identification lights to aid pilots in landing.

One constant problem at SFO is the uneven settlement of runway pavement, since the airport was constructed on landfill. Runways are often closed for resurfacing, an inconvenience to the 800 to 1,000 jets landing and taking off daily and a potential threat to safety when other runways are overburdened.

For its emphasis on emergency preparedness, SFI recently received an award from the Air Safety Institute, one of four airports so honored. In the event of a crash,

emergency trailers preloaded with medical supplies and a daytime staff, including seven doctors, are ready to move into action.

San Diego: Lindbergh Field has the dubious reputation of offering the most obstructed runway approach in the state. Airport administrators concede that the approach is "steeper than normal." In an effort to satisfy critics of controversial Runway 27, the Port District recently bought up nearby apartments and knocked off the upper floors. Some television antennae, flagpoles and trees also have been removed so that a slightly more gradual approach can be made by incoming planes. Other improvements include installation of a special runway lighting system that warns pilots of the "nonstandard approach." But despite such efforts citizen groups still periodically press for closure. Airport officials, on the other hand, like to point out that there has never been a crash by a regularly scheduled airline.

While pilots complain about Lindbergh Field, it seems to fit the needs of another kind of flyer all too well. In recent years the field has become the nesting ground for the least tern, a small bird considered an endangered species. Each year after the birds have migrated, the airport oils the areas where the birds nest, to discourage their return, but so far such efforts have been unsuccessful.

Hollywood-Burbank: At least until the end of the year, this can be called the world's largest privately owned airport serving the public. Lockheed Corporation has said it will close the airport at year's end if efforts to arrange its sale prove unsuccessful. The cities of Burbank, Glendale and Pasadena are currently negotiating purchase terms. Because of its urban location, ALTA has long advocated additional runway identifier lights and visual approach equipment, but the FAA will install these only after continued operation of the airport is assured.

Smaller airports. While the FAA regulates the larger airports in California, it is the state's little-known Division of Aeronautics that is charged with regulating the remaining 280. These range in size from mere landing strips with air socks to privately owned, general-aviation airports. The division grants licenses to these airports based on their compliance with federal government advisory standards. But many airports are exempt since they were built before enactment of the law, and were thus "grandfathered in." A report by the auditor general's office last year blasted the division after discovering airports operating without permits and in some cases in violation of the law. The report concluded that the division's dual responsibility — to enforce aeronautics laws and also promote general aviation — could present incompatible goals. Since publication of the report, the division has taken steps to begin on-sight inspection of all airports.

Technical innovations continue to improve the safety of airports and airplanes, but they cannot ever be expected to eliminate accidents entirely. The equipment also is extremely expensive. If the FAA were to install all the safety equipment at airports which the Airline Pilots Association would like, in California alone the cost would be \$80 million.

Even if all airports were brought up to 100 percent of pilot standards, there would still be the inevitable risk of error in communication between aircraft and airport tower. Human factors will always be able to produce disasters. Increasingly, it is these human miscalculations and misjudgments — rather than airport equipment — which investigators are discovering as the causes of airplane crashes. And this means that there will probably never be a time when we can board an aircraft without wondering whether this flight will be "the one."

Robert Tucker is a free-lance writer in Davis.

The balancing act between the public and attorney interests

By BLAKE THOMSON

In 1972, two young attorneys, Leonard Jacoby (then 30) and Stephen Meyers (then 29), opened a low-cost law office in Van Nuys, geared specifically to the needs of middle- and low-income clients. Their consultation fee was \$15. For a simple divorce they charged \$100. Most attorneys were charging \$350 to \$400 at the time.

Twelve days after they opened for business, Jacoby and Meyers became the subjects of an informal investigation by the State Bar. Seven months later the Bar officially accused the two of "moral turpitude and dishonesty."

Their crimes? (1) They used the word "clinic" in the name of their firm in order to distinguish their operation from a traditional law office. (2) They granted interviews to newspaper, television and radio reporters in which they stressed their low fees and described their cost-saving measures, which included the use of part-time specialists and flat rates for all services.

The Bar claimed that their actions constituted a violation of the professional code, which places strict limits on attorney advertising. The Bar's disciplinary board recommended to the state Supreme Court that the two attorneys be suspended from practice for a period of 45 days.

Sixteen state legislators then sent a letter to the State Bar president to "express concern over the apparent implications of the disciplinary proceedings." But the president and board of governors were unmoved.

Jacoby and Meyers appealed, and the state's high court finally ruled in their favor last May, roughly five years after the Bar initiated its investigation. In its 5-1 decision, the court concluded that lawyers may cooperate on interviews and articles about themselves and their practices as long as the statements are not aimed at soliciting clients. According to the court: "A communication is not primarily directed toward solicitation unless, viewed in its entirety, it serves no discernible purpose other than the attraction of clients." The court also ruled that the term "clinic" may be used as long as the lawyers in the firm are actually making a special effort to serve the poor.

The prosecution of Jacoby and Meyers was only one of several highly controversial actions undertaken by the State Bar during the past few years. In November 1975, the Bar began investigating a Los Angeles Superior Court commissioner, Harold V. Boisvert, because he had written an article for the *Los Angeles Times* in which he accused some of the city's judges and attorneys of improper behavior. Specifically, he claimed that when a powerful attorney was dissatisfied with the Superior Court judge to whom his case had been assigned, the attorney could usually get the case reassigned simply by complaining to the presiding judge.

Silencing a critic

After Boisvert's article was published, Bar officials asked for a copy of his original text and for any objections he may have had to the final edited version. They claimed they had to investigate to determine whether Boisvert, a nonpracticing lawyer, had violated the State Bar Act by undermining respect for the courts. When Boisvert balked at these demands, the American Civil Liberties Union came to his aid and accused the State Bar of trying to punish him in order to keep other potential critics from speaking out. A sharp debate followed, in which the Bar was accused of trying to stifle freedom of speech, while Boisvert's article was depicted by a well-known Los Angeles attorney as "wholly unfounded" and perhaps "deliberately or recklessly misleading."

Another controversy was touched off last year when the State Bar gave attorney Charles E. Sherman of Occidental a year on probation for starting a do-it-yourself divorce operation. This consisted of several offices staffed by nonlawyers who helped people arrange for low-cost divorces. The service was advertised in newspapers and through the mail. The ads stated that the staff had been trained by lawyers. Once again, many people felt that the Bar was punishing someone for performing a public service.

Incidents such as these have prompted critics to accuse the State Bar of neglecting its responsibility to the public while



The board's six nonlawyers:

The six public members who now serve on the State Bar Board of Governors are a fairly diverse group, but they do have a few things in common. Five of the six are from Southern California — specifically, Los Angeles and Orange counties. Three are women and three are members of minority groups. Four of the six have had some sort of professional experience in the field of education. All are Democrats. And all have been affiliated with what could be termed “liberal causes.”

The new members are:

- **Marguerite Jackson Archie** (*Culver City*). Archie is chief deputy to Congresswoman Yvonne Brathwaite Burke. She was the first director of the “Upward Bound” program at Occidental College, and was director of the Economic Opportunity Program for the State University and Colleges. She has also worked as a counselor at high schools in Los Angeles and Chicago.

- **Edward R. Becks** (*East Palo Alto*). Becks is executive director of the Economic Opportunity Commission of San Mateo County. Previously he was a news editor and columnist with the (San Mateo) Peninsula Gazette, and president of the Redwood City NAACP. He is currently an officer in several community development organizations.

- **David J. Boubion Jr.** (*Alhambra*). Boubion is dean of students at California State University, Los Angeles. He spent almost eight years in various administrative posts with the Peace Corps. He is a member of the Narcotics Prevention Center and is on the executive board of the Center for Law in the Public Interest.

- **Joyce A. Fadem** (*Los Angeles*). Fadem is a higher education specialist with the California Teachers Association. She is also chairwoman of the Los Angeles Housing Authority Commission, and a member of the state legislature’s Advisory Commission on the Elections Code. She has taught at Los Angeles City College and at Immaculate Heart College and has written articles for several education journals.

- **Harriet Katz** (*Los Angeles*). Katz is a freelance journalist who is currently writing a novel. She once served as public information officer for the American Civil Liberties Union, and is currently a member of the National Women’s Political Caucus.

- **Frank J. Quevado** (*Irvine*). Quevado is in charge of affirmative action for the Hunt-Wesson Foods Company. He was the equal opportunity representative for Southern California Edison Company and an affirmative action consultant to the state Department of Corrections. He has been an adviser to the Educational Research Institute and a counselor for the Western Interstate Commission on Higher Education.

Under the provisions of AB 590, which took effect January 1st, 1976, the public members serve three-year terms. However, for the initial term, which began in September 1976, two of the public members will serve for one year (Archie and Quevado), two will serve for two years (Fadem and Katz), and two will serve three years (Becks and Boubion), as determined by lot.

vigorously protecting the interests of the legal profession — a charge that is strongly denied by Bar officials.

There is, of course, nothing unusual about a business or professional group looking out for its own members. But the State Bar of California is a special case. It is not simply a private lobbying organization like the Chamber of Commerce, the National Association of Manufacturers, or even the American Bar Association. It is, rather, an unusual cross between a private interest group and a public regulatory agency. Technically, it is defined as a “public corporation.”

Some distinctive features set the State Bar apart from these other groups. First, it is “an integrated bar.” That is, membership and payment of dues are compulsory for every lawyer in the state. Secondly, the State Bar is obligated by law to police California’s legal profession and to put the public interest ahead of the private interest of lawyers.

Enter the nonlawyers

However, various observers have pointed to episodes such as the Jacoby-Meyers, Boisvert and Sherman cases and have argued that it is simply unrealistic to expect the members of any profession to be completely public-spirited in the management of their own affairs. Therefore, legislation was enacted in 1975 which requires the governor to appoint six nonlawyers to serve on the State Bar Board of Governors, along with the 15 attorneys who are elected to the board from districts by their fellow lawyers.

Under this legislation, authored by Democratic Assemblyman Howard Berman of Beverly Hills, the six public members serve on committees, vote on board policy and perform all of the other duties required of the attorney members. The first non-lawyer members were installed September 22nd, 1976, after being confirmed by the state Senate.

This change in board membership is part of a general trend toward lay representation in the state’s various regulatory bodies, primarily those within the state Department of Consumer Affairs. For example, the majority of the state Board of Medical Quality Assurance is now composed of nondoctors. The implications of lay influence on such agencies could be significant. If several outspoken, independent public members gained control of the Board of Governors of the State Bar, through a coalition with four or five “progressive lawyers,” several sweeping changes might be instituted: new admission requirements for law schools, a new bar examination, new standards for attorney discipline, new forms of consumer protection for dissatisfied clients, and new standards for prospective judges.

California attorneys recognized this threat to their professional autonomy as soon as the idea of public members was introduced. Throughout the period when Berman’s bill was making its way through the Legislature, the Bar lobbied for an alternative plan in which nonvoting public observers would sit with the Board of Governors. However, that proposal was rejected, even on a temporary trial basis, by a Legislature composed largely of attorneys concerned about their own post-Watergate images.

(Seven California lawyers were intimately involved in the Watergate scandal, including Richard Nixon. As a result, it has lately been difficult for the Legislature to resist political reform.)

Despite the obvious concern within the profession, the new public members may not produce any major changes. They may sometimes be intimidated by the technical expertise of the attorneys on the board — or they may simply be outvoted on major issues. A lot will depend on how well they are accepted by the attorneys on the board, who outnumber the nonlawyers better than two to one. If the attorneys see

the newcomers as hostile outsiders or as well-meaning but misinformed meddlers, the lay members will accomplish little. But if they are able to demonstrate an understanding of and respect for the attorneys' viewpoint, they may succeed in making the lawyers more receptive to ideas originating from outside the profession. The relationship that is established between this first group of public members and their lawyer colleagues may endure for many years to come, long after the present members' terms have all expired in 1979.

A delicate position

The lay members are well aware of their delicate position. Only one of them will publicly discuss their activities on the board in any but the most general terms. The others are apparently afraid of upsetting their relationship with the attorneys which is already strained.

As one of the lay members said during a recent interview: "Any time you talk about a process that's still occurring, you risk influencing the outcome. I wouldn't want to talk about proposals we public members have lobbied for or votes we've influenced, either individually or collectively. If we were to take credit for anything, that could be interpreted, perhaps unjustly, as implying discredit on the past record of the board. We haven't given detailed interviews to any of the legal newspapers or anyone else. I suppose the best way to judge our impact is to wait a while and then view the record. Look at the votes."

Most of the lawyers on the board are equally reluctant to discuss the impact of the new members. The ironic result of this caution is that people who are ostensibly representing the public — and thereby opening up the bar's decision-making process — are in fact helping to shield much of the process from public view. Still, many observers are convinced that the addition of public members will make the Board of Governors more readily accountable for its actions.

Assemblyman Berman, a lawyer, claims that the public members have already accomplished quite a bit on behalf of their fellow laymen: "So far the signs are very encouraging. For example, they've been instrumental in bringing about some reforms in the way judicial candidates are rated; they've pushed the Bar to take a more active approach toward making legal services available to the public; and they've played a major role in getting more public members on the Bar's disciplinary boards."

Edward R. Becks, the only public member who was willing to discuss specific issues, also pointed to a record of accomplishment. "The affirmative action program internal to the Bar would not exist if it were not for the active participation of the public members," he says. Also, the public members have been pushing for a reform whereby those who fail the bar exam would be retested only on the sections they have failed. Becks notes that the laymen are sometimes able to maximize their influence by voting in unison, particularly on issues such as affirmative action or public disclosure of Bar activities.

But some people argue that laymen are not qualified to sit on

the Board of Governors. Democratic Assemblyman Bob Wilson of San Diego questioned the idea of lay representation when Berman's bill was first introduced in 1975. "We're asking lay people who have no training in the law to weigh very difficult legal questions," he warned.

Other observers disagree, arguing that the issues that come before the board are entirely different from the technical legal issues that might arise during a trial. In defense of lay members' qualifications, Berman says: "I think they're quite capable of doing the job. Look, they're deciding policy questions, not fine points of law. They're quite competent to do that. It's really kind of preposterous to argue that they're not qualified. It's like saying that as a legislator I'm not qualified to vote on any issues outside my areas of specialization. But I shouldn't be prevented from voting on a bill just because it didn't come from one of my committees."

Member Becks agrees: "Attorneys as such possess no particular expertise to be governors . . . Everybody on the board has had a wide range of experiences."

Judging the judges

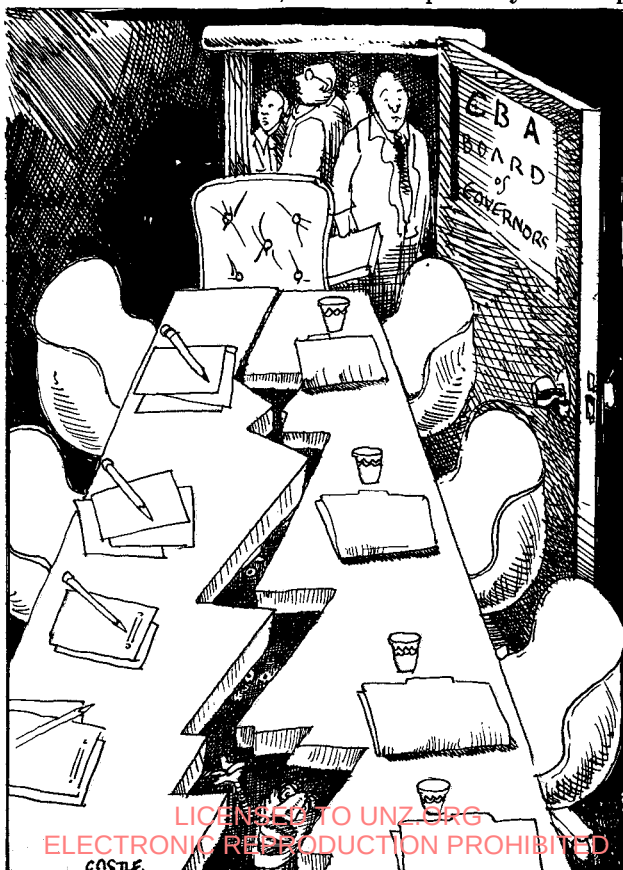
Still, a question remains as to whether laymen are equipped to pass on the qualifications of prospective judges nominated by the governor. The State Bar regularly evaluates prospective judicial appointees and assigns each a ranking from "exceptionally well qualified" to "not qualified." While these ratings have no official legal status, they normally carry considerable weight with the Governor, who makes most trial court appointments (except those decided by election).

A layman certainly can determine whether a lower court judge nominated for a high court has a history of handing down decisions that discriminate against particular groups. But a layman cannot hope to test a prospective judge's knowledge of complex legal doctrines. There, he or she must defer to the attorney members of the board.

But if the attorney members split on the question of competence, it then falls to the lay members to decide the issue. This is precisely what happened when Rose Bird was nomi-

nated by Governor Brown to be chief justice of the state Supreme Court. And the result was a serious fracas among members of the Board of Governors, in which two of the attorney members accused the six laymen of giving in to pressure from Governor Brown rather than making an independent evaluation of Ms. Bird.

Specifically, board member Joseph Cummins of Los Angeles claimed that Governor Brown's legal affairs secretary, J. Anthony Kline, had attended the board's private executive session at which the nomination was discussed, and that he had taken the six public members to dinner the night before. At the same time, board member Oliver Jamison, a Fresno attorney, said that the public members were responsible for the decision to keep the breakdown of the vote on Bird a secret. The board did report that there were 12 votes in favor of Bird, three against,



and five abstentions, but officially declined to reveal which members voted which way. However, the press subsequently reported that all six public members supported Bird, thereby providing her majority approval.

Kline angrily denied the implication that anything improper had occurred, saying: "Neither the Governor nor I solicited any member of the board after nomination." One of the public members later insisted: "The Governor has *never* lobbied us, and neither has anyone from his staff."

Aside from the controversy, the episode raises some other important questions: Were the laymen competent to evaluate Bird? Did they rely on the Governor's judgment instead of their own? And regardless of competence, can these public members — or any other appointed officials — normally be expected to act independently of the elected officeholder who selects them?

Assemblyman Berman says yes: "A lot depends on the integrity of the people you're talking about. The people who've been appointed by the Governor and are on the board now are all very independent, upstanding people. They're at least as independent as the members of the judicial appointments commission, which has the official say-so over whether a prospective appellate judge is approved. Of the three people on that commission, two are judges — which means they're appointed — and the third is the attorney general, who holds a partisan public office.

"And besides, serving on the board isn't lucrative. Right now board members don't get anything over their daily expenses. So in financial terms, there's no incentive for a member to sacrifice his independence."

Becks echoes this view: "There is no favor that comes with appointment to the Board of Governors. As a matter of fact, it is a fairly expensive exercise for public members. We are committed to what we are doing and do not necessarily feel that we owe tribute either to the Governor or to anyone in his office. If in fact the public members are under Governor Brown's control, I do not believe that Governor Brown knows it, nor do I believe that the public members know it."

An ouster movement

But statements such as these have failed to reassure board member Cummins, who has accused the public members of injecting partisan politics into the Bar's decision-making activities. Cummins recently announced that he is planning a drive to have the laymen ousted from the board, either by the Legislature or by the courts. Failing that, he may attempt to circumvent the public members through the establishment of a voluntary Bar composed of attorneys only. It has also been suggested that public members should remain on the board, but that in the future they should be appointed by the state Supreme Court rather than by the governor.

Cummins and Jamison are not the only ones who are already disenchanted with the public members. Many other lawyers were recently angered when the laymen were able to determine the outcome of a three-way election in which next year's State Bar president was chosen. Because of a unit vote from the laymen, board member Garvin Shallenberger was chosen to succeed this year's president, Ralph Gampell of San Jose, despite the fact that the attorney members voted against Shallenberger by a 2-1 margin.

Even many people who support the concept of public members are not entirely satisfied with the present situation. Some of these critics have complained because the laymen receive no pay except for a modest per diem, which doesn't always cover actual expenses. The result, according to these critics, is that service on the board is open only to relatively affluent people with enough free time to study the issues and attend board meetings and committee sessions

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Legislation to rectify this inequity recently cleared the Legislature. Authored by Assemblyman Mike Gage, it would provide the public members \$50 a day for their service on the board. The legislation won Assembly approval only after a stipulation was attached ordering that the funds be provided by the state Bar rather than the taxpayers.

Of the bill, Berman says: "Actually, I think all the board members should be paid, the attorneys as well as the laymen. That way, you'd open the board up to a cross-section of attorneys and not limit it to just the members of the big, well-known firms."

The high cost of serving

Indeed, long before there were public members on the Board of Governors, many California attorneys were complaining that the board was not representative of all segments of the state's legal profession. Solo practitioners with small, modest practices have often argued that they are usually denied a significant voice in the shaping of Bar policy because they can't afford to donate the amount of time that is required of a board member.

In recent years most attorney members have estimated that Bar work has taken up nearly half their time. And, by tradition, the president of the board devotes full time to his office. A large or medium-sized law firm may be able to carry a partner who is employed half-time on free service over a three-year term, but few attorneys who practice alone can afford to serve.

The lack of compensation is not the only barrier that keeps some attorneys off the board. There is also the cost of being elected. A former member of the board estimated recently that a successful campaign in Los Angeles County could cost \$10,000 or more because of the number of attorneys to be contacted. While most of this money is donated by other attorneys acting as campaign contributors, the candidate personally must make up the difference, which could total \$2,000 or \$4,000 — a sizable sum for a new lawyer or one who is interested primarily in serving the poor.

Women attorneys also complain that they have traditionally been denied access to ranking positions in the major law firms — positions that provide entry to the Board of Governors. Joanne Garvey of San Francisco, whose term ended in September 1974, is the only woman attorney ever elected to the board. (Three of the new public members appointed by Governor Brown are women.) However, as more women enter the profession, and as the courts continue to enforce rules against discrimination in hiring, this situation may change.

Despite the obstacles, two solo practitioners made it onto the current Board of Governors. Moreover, only eight of the 15 attorney members come from large firms with 10 or more members. The remaining five come from small or medium-sized firms with anywhere from two to nine members.

Obviously the Bar is no longer the exclusive club it once was. For the first 40 years of its existence, the 50-year-old State Bar was strictly dominated by members of the biggest firms in San Francisco and Los Angeles. Once these firms got together and put their resources behind a slate of candidates, the election was usually a foregone conclusion.

Bucking the establishment

In 1966, however, a group of trial lawyers in the Los Angeles area decided to challenge the "establishment" and run their own slate. Since this group was first organized, several of its candidates have been elected. But many attorneys continue to complain that the Board of Governors is not responsive to their special problems. Board member Edward Lascher recently responded to this criticism by declaring that the State Bar is more representative of its attorney constituency than are the many local bar groups. He claimed that only about 40 percent of the state's lawyers belong to any local association and added that the officers of these local units are not elected directly by the membership, as are members of the Board of Governors, but are chosen by nominating committees instead. He also points out that the Bar cannot always represent lawyers since it is required by law to consider also the welfare of consumers.

At any rate, the debate over representation is likely to continue because the legal community is divided over a number of issues, including the use of paralegals (trained laymen), continuing education and periodic relicensing for attorneys and certification of specialists.

Many lawyers are afraid they will be displaced by paralegals. Solo practitioners say they cannot spare the time or money to attend seminars and take university courses, and so most of them are opposed to relicensing. Many new lawyers who lack the experience to qualify as certified specialists oppose continuation or expansion of the presently limited specialization program. These attorneys resent those financially secure lawyers on the Board of Governors who want to impose such programs on less prosperous lawyers in order to maintain and promote "professional dignity."

At the same time, many laymen continue to attack the board for allegedly protecting lawyers while ignoring the interests of consumers. These critics are looking to the public members to give California consumers a new and powerful official voice in controlling the delivery of legal services.

While some doubts have been raised about the lay members' performance thus far, there is still a chance that they will help make the California Bar more client-oriented than ever before. 

Blake Thomson, a free-lance writer in Sacramento, has previously contributed articles on grand-jury reform and minor political parties to the Journal.

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When the Legislature decided in 1975 that non-lawyers would serve along with attorneys on the State Bar Board of Governors, the idea was that the lay members would help make the legal profession more responsible to the general public. However, most attorneys claim that their organization has been doing a fine job of protecting consumers all along.

Whenever called upon to defend their record of public service, Bar officials point proudly to a series of recent reforms and programs (see box). They believe this record proves that the profession is, and always has been, capable of regulating itself. But the Bar's critics — including some lawyers as

well as non-lawyers — charge that the reform efforts have been defensive, half-hearted and sometimes misguided. They say that thus far the Bar has been doing too little, too late.

One such critic is attorney Stephen Meyers, who charged in a *State Bar Journal* article recently that the profession's highly publicized public-service efforts fail to deal with three basic problems facing a middle-income person in need of legal service: price, accessibility and accountability.

Meyers claims not only that many people are unable to afford legal service, but that many of those who could afford it do without because they are convinced they won't get their money's

worth, especially when the services to be performed are routine.

This observation was confirmed in a 1974 survey taken by the American Bar Association. The survey reported that legal fees were then averaging \$40 to \$50 an hour, and sometimes reached \$250 an hour. A similar ABA survey released in 1976 found that nearly a third of the nation's adult population had never consulted a lawyer; that about two-thirds said that lawyers charge too much; and that well over 50 percent believed that the legal system is biased in favor of the rich and powerful.

On the subject of accessibility, Meyers argues that too many law offices are located in downtown areas and few are open after regular business hours when it would be convenient for working people to see an attorney.

On the issue of accountability, Meyers notes that the middle-income client normally sees an attorney on a one-shot basis, whereas the major corporate client has a continuous need for legal advice. If a lawyer loses a corporate client, he has lost a lot. But if an attorney fails to perform adequately for a client he doesn't expect to see again, he probably hasn't lost much.

Avoiding problems

Meyers also charges that lawyer referral services are hardly more useful than Yellow Page ads. The screening of attorneys who sign up is inadequate, he says; the attorneys on the referral lists are usually no more accessible, accountable, or reasonably priced than are other attorneys; and there is no professional oversight of the work actually performed by those attorneys.

"The kinds of solutions . . . which attorneys have developed inevitably avoid many of the real problems of the middle-income legal consumer . . . Attorneys are just unwilling to think in any terms which might ultimately involve lower fees and greater service and responsibility," Meyers says.

The power of the reform movement and the impact of the new public members on the Board of Governors was recently tested by the issue of lawyer recertification. On April 15th, 1977, the board unanimously voted to drop a proposed plan which would have required every practicing attorney in the state to either participate in a continuing education program or take a comprehensive examination once every five years.

This was merely the latest of several

Bar Programs for the Public:

Here is a rundown on some of the Bar's public service positions:

- **Informational radio broadcasts**, advising listeners of their legal rights and, in some cases, explaining what they can do on their own without an attorney's help.
- **Judicare**, a lawyer referral service designed to assure elderly persons adequate access to the legal system.
- **Bar endorsement of legislation** to assure that persons subject to guardianship or conservatorship proceedings have the right to counsel and adequate access to information.
- **Law in a Free Society**, an educational project for school children begun in 1970 and currently in use in more than 60 school districts.
- **Continuing Education of the Bar**, a broad range of seminars, lectures, videotape presentations, publications — all designed to keep lawyers, judges, police, teachers, reporters and other interested persons up to date on evolving legal issues.
- **Support for court reform** that simplifies procedures to save lawyers' time, and presumably, clients' money. For example, under new rules for settlement of civil cases, suits for less than \$7,500 can be taken to arbitration rather than to court. The Board of Governors also supports a new plan which requires attorneys to go to arbitration before going to court to collect a legal fee.
- **Establishment of a nonprofit, prepaid legal insurance program**, similar to the Blue Cross medical plan, supposedly benefiting clients by spreading the cost of legal services over a period of years and guaranteeing all necessary services for a fixed annual premium. The Bar has promoted this program heavily, but so far consumers have shown little interest.
- **Bar sanctioning of privately operated group legal service plans**, to allow an organization such as a labor union to negotiate a discount rate with a law firm. By the end of 1976, 1,156 group arrangements — involving 458 law firms — had been established statewide.
- **An ethics test**, beginning in 1975 — largely in response to Watergate — was included on the State Bar exam. Obviously no test can ensure that every attorney will be honest, but Bar officials claim it will prove all new attorneys are reasonably familiar with the code of ethics.
- **An experimental lawyer specialization program**, begun in 1971. Attorneys who pass an exam in one of three specific fields — criminal law, workers compensation or tax law — and who meet other experience and education requirements, are identified as specialists. Recertification is required every five years. Many young attorneys object to the concept of specialization, arguing that continuing education is too costly for a young attorney just starting out, and that a beginning lawyer with a small practice finds it difficult to obtain the number of specialty cases needed to qualify. But last year the Board of Governors voted to extend the program on an experimental basis for another two years, despite such objections.

#HOWMUCHIS#ENOUGH#?

setbacks for the proponents of recertification. The state Legislature began to pressure the Bar on this issue as early as 1971, but so far every effort to institute relicensing has been killed because of protests from the state's 53,000-plus active lawyers.

In its first attempt to develop a recertification program several years ago, the Bar rejected the idea of compulsory continuing education coupled with periodic retesting, and opted instead for automatic relicensing for every lawyer who complied with certain "minimum standards." The proposed standards set forth in the original plan could have been met through continuing education, by teaching in a law school, having articles published in law journals, doing committee work for the State Bar, working with local bar associations, or by simply reading various legal periodicals.

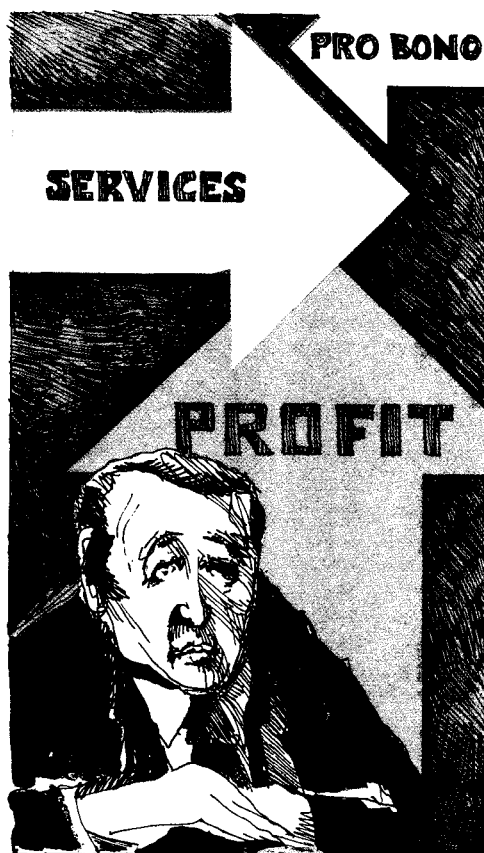
Courses or exams

The plan rejected in April was introduced last year, before the public members joined the Board of Governors. It would have required every lawyer to complete 60 hours of study in approved courses every five years. If a lawyer chose not to take such courses, the alternative would have been the exam that is currently given to all out-of-state lawyers applying for permission to practice in California. About two-thirds of the required study could have been in courses of the lawyer's choosing. The remaining third would have included a course in ethics, plus courses in seven of 12 approved fields.

California would not be the first state to enact such a program. Minnesota claimed that distinction in 1975 when it declared that every three years each active attorney in the state must complete 45 hours of course work accredited by a state board. In Iowa, lawyers must complete 15 hours of class work annually to renew their licenses. Including California, 32 additional states were considering some form of continuing legal education (CLE) as of last year.

Critics have pointed out that none of the programs now in effect or under consideration provides for testing to assure that lawyers have learned what they are supposed to. In fact, under the Iowa and Minnesota programs, the only proof required to show that an attorney has actually taken the courses is a personal affidavit from the attorney in question.

(Supreme Court Justice Harry



Blackmun and Chief Justice Warren Burger were excused from the Minnesota CLE program even though both are licensed in that state. They argued, successfully, that serving on the U.S. Supreme Court is itself an education.)

Although the public members failed to generate any new support for recertification in California, they may have a major impact on another issue — mandatory service for the poor. This issue arose last year when a bill was introduced in the legislature to require all practicing lawyers in the state to devote 40 hours a year to *pro bono* work (free work for the poor). The Board of Governors successfully opposed that bill on the grounds that lawyers should not be singled out to the exclusion of other professions.

This year, Board President Ralph J. Gampell, an attorney/physician from San Jose, endorsed the concept of a bill to require doctors and dentists, as well as lawyers, to devote 40 hours annually to *pro bono*. (This equals roughly one half day a month.) Gampell suggested an exclusion for those in practice less than five years, who may still be struggling, and for those who have been in practice over 25 years, and have already "paid their dues."

He warned his colleagues: "If you choose to reject this argument, then it is my belief that . . . we may well be dragged, kicking and screaming. Wouldn't it be refreshing," he asked, "if we, as an organized legal profession, could be at the forefront of such urgently needed social change?"

Gampell added that he did not expect his proposal to be welcomed by his fellow lawyers: "I have already received mail about Peking and Moscow and the color of Mao jackets that the Board of Governors will mandate . . ."

Expected opposition

As expected, many attorneys are now expressing their opposition. As one lawyer/accountant said: "This proposal really bothers me. Why single out lawyers? Why shouldn't everyone who's licensed by the state be required to do free work for the poor? Why not include accountants, plumbers, electricians? This plan also raises the issue of involuntary servitude. How can you constitutionally force someone to work for nothing?"

Although Gampell has been in the forefront of the campaign for mandatory *pro bono*, his attitude nonetheless reflects reluctance. One of his main arguments is that if the State Bar doesn't come up with a plan of its own, one will be imposed by the Legislature or the courts.

Over the years, attorney members on the board have used the same argument to justify many other reform proposals to their colleagues. This theme was sounded repeatedly by many of those who attended last year's State Bar conference in San Diego on Law in the Future.

The summary report issued after the conclusion of the conference endorsed a number of public responsibility measures, including recertification, mandatory internship for new lawyers, subsidies from the State Bar for private attorneys who do "public interest" work, and a new law to allow individual clients to deduct legal fees from their income taxes. (At present, only those legal fees that can be classified as business expenses are deductible.)

After making these endorsements, the report warned: "Unless the legal profession effectively meets the growing public outrage at the high cost and inaccessibility of competent lawyers, that outrage will be translated into regulation, control and alterations . . . that are not likely to be beneficial to lawyers or the public. B. T.

WHAT'S THE LIFE SPAN OF A GOLDEN GOOSE?

The two missing links in the first-installment budget

By ED SALZMAN

From the relatively cool handling of the state budget by the Legislature this year, you might think the 1977-78 spending package was little more than another routine bill. That, in fact, is what it was — a non-controversial first installment on the big fiscal decisions yet to come. It was almost deceiving to call the \$14.7 billion appropriations measure enacted on June 24th "the state budget" because it ignored the two most important fiscal issues of the year, property-tax relief and school-finance reform.

There was less publicity given to the budget process this year than in any year in memory. The Republicans didn't even try to employ the usual end-of-the-fiscal-year tactics to embarrass the Democratic Governor, although Assembly Republican leader Paul Priolo made some pro-forma remarks about the need to reduce spending (at a time when the state surplus was mounting at an unprecedented rate). The Governor had more time than usual, six days, to decide which items to cut from the budget. But even his dramatic signing ceremony one minute before the start of the fiscal year failed to develop much interest, except among state workers and other special interests with an economic stake in his vetoes.

This year's budget was marked more by what it didn't contain than by what it did. The property tax and school finance issues were left for resolution after lawmakers returned from their July vacations. But eventually these

items will boost the spending total for the year to the vicinity of \$16 billion, and will have a long-range effect on virtually every citizen of the state. In addition, lawmakers failed to include a controversial appropriation sought by Brown: \$92 million for the construction of new prisons in San Diego and San Bernardino counties. And the threat mounted by Assemblyman John Vasconcellos and friends to exert budget

would be able to solve the property-tax problem and more or less meet the Supreme Court's *Serrano* mandate without even straining the exchequer?

The surplus is the product of two factors — a conservative spending policy by the Governor and skyrocketing income from the state personal income tax. The \$14.5 billion budget signed into law by Brown was 21 percent higher than the \$12.8 billion spending

program he approved for the previous year, yet it contained virtually no fat. Legislative Analyst A. Alan Post, working on his final budget before retiring in September, said the Governor did "a lot of squeezing down. The Governor had his eye on where he wants to be." Where Brown wanted to be was wallowing in money at election time, but Post forced the Administration to look even beyond that to the time — perhaps four years hence — when the income-tax goose will stop laying so many golden eggs. Post feels Brown was too tight with the buck in some areas where there

clearly is going to be a need for major expenditures, such as in the restoration of various pension funds to solvency.

But the main reason why the state has so much money is not Brown's restraint but the effect of inflation on income tax collections. As salaries rise to match pace with the cost of living, the state keeps getting bigger and bigger hunks of the individual's paychecks because of the progressive nature of the tax structure. Many Californians

**Growth of state budgets and
personal income taxes, 1968 - 1978**

Fiscal year	Budget signed by governor	Percent increase	Income tax revenue estimate	Percent increase
1967-68	\$ 4.9 billion		\$552 million	
1968-69	\$ 5.7 billion	16	\$1.0 billion	81
1969-70	\$ 6.2 billion	9	\$1.2 billion	20
1970-71	\$ 6.6 billion	6	\$1.4 billion	17
1971-72	\$ 6.8 billion	3	\$1.5 billion	7
1972-73	\$ 7.7 billion	13	\$1.9 billion	27
1973-74	\$ 9.3 billion	21	\$2.2 billion	16
1974-75	\$10.2 billion	10	\$2.3 billion	5
1975-76	\$11.5 billion	13	\$3.0 billion	30
1976-77	\$12.8 billion	11	\$3.5 billion	17
1977-78	\$14.5 billion	13	\$4.3 billion	23

pressure on the University of California failed to materialize.

Even with the addition of perhaps \$1.5 billion for tax relief and aid to schools, Governor Brown will face reelection next year with a bundle of money still available in the state treasury for future use. If \$1.5 billion is spent by the returning legislators, there would still be some \$1.2 billion in surplus at the end of the fiscal year on June 30th, 1978. Who would have guessed even a year ago that the state

hardly notice that they are carrying more of a burden because the taxes are deducted via paycheck withholding. If California had not adopted the deduction system during the Reagan Administration, the April 15th howl would drown out the revolt of the property taxpayers — a revolt that is producing relief this year. In the past decade, state income tax collections have risen 800 percent — far faster than the cost of living or state spending. Within the next year, the income tax will supersede the sales tax as the prime revenue source for state government.

Inflation, combined with the state's healthy condition, led state employees this year to push hard for pay increases more than double the five percent hike proposed by Brown in January. The Legislature went along with the 10.1 percent recommended by Post and the State Personnel Board, but Brown didn't yield. He slashed \$77 million in pay raises from the budget, although he allowed the average pay increase to stand at 7.5 percent. (He cut university faculty increases from 6.5 percent to 5 percent.) The \$77 million was by far the biggest item in the \$188 million in vetoes made by Brown on June 30th. Employee organizations said they would try to have Brown's veto overridden, but the Governor clearly held the upper hand. Some of the other vetoes by the Governor:

Transportation: The budget bill contains for the first time an effort by the Legislature to control the \$1.2 billion highway budget. The Legislature added \$55 million to the amount submitted by the Administration, and Brown cut \$23 million of the augmentation. The budgetary-control language was based on the assumption that other highway-control legislation would be enacted in the coming months.

Medi-Cal: The Governor cut \$36 million in Medi-Cal rate increases designed to provide pay hikes for nursing-home employees, doctors and emergency-room workers. Brown said that sufficient funds had previously been allocated for pay hikes.

Education: Some \$22 million was cut from the appropriations for early childhood education and educationally disadvantaged youth programs. Brown said these funding issues should be part of the comprehensive *Serrano* legislation.

Social services: A group of retarded individuals conducted a sit-in in Brown's office to demand that an \$18 million legislative addition to the budget for social services be retained. Brown sliced \$5 million, claiming that a six-percent increase over the present

level of spending is sufficient. He also noted that the federal government has been pulling away from the program, leaving the state to carry the burden. Roy Bell, state director of finance, is worried about possible future consequences of the federal government's decision not to pay the escalating costs of these programs, such as family planning, child protection and sheltered workshops. In addition, he reported that an additional \$20 million was allocated this year for home-maker-chore services because the state has not yet found a way to control this program's skyrocketing costs.

University of California: Brown cut \$600,000 for an affirmative action program and \$100,000 for a human sexuality program, claiming that these items should be financed through different procedures. These relatively small allocations, however, were minor issues compared to the flap raised during the meetings of the legislative conference committee on the overall question of "legislative control." It was only at the 11th hour that the committee, responding to University complaints, eliminated language that would have limited the amount of student-fee increase the university could impose without losing state funds. Assemblyman Vasconcellos has been trying for several years to make the University more responsive to legislative feelings by using the budget process as a lever. This year, his Assembly education subcommittee, with changed personnel, agreed with him and he went to the mat with University President David Saxon. The University may have saved the day in this budget, but Vasconcellos will be back with more of the same pressure next year. The University claims that the Constitution grants it protection from political interference, but the Constitution also gives the Legislature a voice in the financial affairs of the system.

Community colleges: Brown cut \$9 million in construction funds, emphasizing that projects must await the enactment of additional bond authorization rather than cut into other capital-outlay funds.

Judges: Some \$6 million in contributions to the judges' retirement fund was eliminated, and the Governor said he would attempt to work out a long-range plan for making the fund solvent.

Blue-pencil power

All told, these cuts are not particularly significant, especially since they represent such a small part of the mammoth budget. But Brown took

some actions that could be extremely significant — if anyone chooses to test his authority. In two sections of the budget dealing with social welfare, the Legislature made potential costs subject to approval of the joint legislative budget committee. Brown eliminated that language as an unconstitutional "encroachment upon the duties and responsibilities of the executive branch."

According to Post, Brown is probably right that the Legislature was proposing an encroachment. But there is a question whether that gives the Governor the right to take the language out of the budget — in effect, encroaching on the powers of the judiciary. The state Constitution limits his use of the blue-pencil to reduction or elimination of items of appropriation.

Probably of greater concern to lawmakers was the elimination of complicated verbiage designed to control campaign audits by the state Franchise Tax Board. The Legislature limited audits to 10 percent of contributions and 25 percent of expenditures. Brown's ground for item veto: "It raised a serious constitutional issue of separation of powers." The Governor, in effect, was allowing the Franchise Tax Board to spend more by cutting the item from the budget. Brown's act may in itself be unconstitutional. The Legislature isn't very likely, however, to take the issue before the state Supreme Court.

Every budget involves a certain amount of pushing and shoving between a governor and those in control of the Legislature. In 1977 at least, it has been clear that Brown's surplus extends beyond money to political horsepower. 

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HERE COMES THE ADJUDICATOR

Sillas' plan to take traffic tickets out of the courtroom

By JILL HOCKENSON

If you get a ticket for running a red light, your "day in court" is apt to consist of a fast shuffle past a judge operating with assembly-line efficiency. You end up outside the courthouse feeling frustrated, ignored and convinced there is something drastically wrong with the system. But if Herman Sillas, the head of the state Department of Motor Vehicles, gets his way, a cited driver in the future will appear at a nonjudicial, informal hearing in which he or she will have plenty of time to present a case and be counseled on traffic safety.

Sillas' plan is known as Administrative Adjudication of Traffic Infractions (AA). It represents a significant attempt to relieve a backlogged court system and to reform an ineffective DMV safety program. Sillas claims there will be two prime benefits to Californians if the Legislature enacts the DMV-sponsored bill (AB 1068 by Assemblyman Vic Fazio of Sacramento): It would provide a more humane system of dealing with traffic cases, and it would free the courts from the high cost of handling the huge volume of routine vehicle matters.

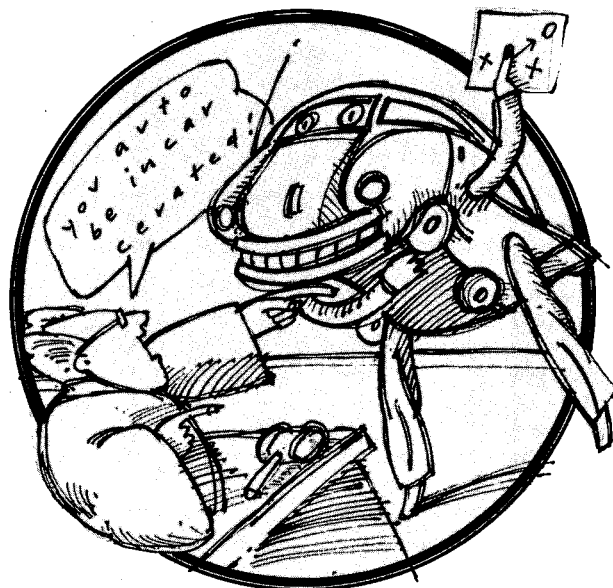
The current legislative push for the adoption of an AA system stems from a DMV study requested by the state Senate. The study showed that court expenses run \$700 to \$1,000 a day and that 77 percent of the non-parking filings in lower courts are traffic infractions. The Legislative Analyst's office conducted a companion study which supported DMV's analysis of the problem and endorsed the AA solution.

A major concern is the lack of uniformity and equity in adjudication throughout the state: Similar violations in various counties draw differing penalties. The DMV report showed that driving records are rarely used in imposing penalties and, even if requested, offer little assistance since they are often incomplete or nonexistent. Knowing the ropes, multiple offenders can choose to attend traffic school which, upon completion, cancels the citation. Although the idea of traffic schools rehabilitating a driver sounds good, the report said persons attend only because they can thus forestall action against their licenses and keep auto insurance rates from increasing. Furthermore, the schools concentrate on attendance, tardiness and traffic accident films, instead of a comprehensive driver-improvement course emphasizing the consequences of careless driving.

Pushing hard

The DMV — convinced of the need for AA and anxious to redeem itself after recent scathing criticism by the Little Hoover Commission — is pushing hard for the proposal.

The author prepared this article as a Journal intern from Chico State University.



Knowing that court reform on any scale is difficult to accomplish, a five-year pilot project is proposed for Sacramento, Placer and Yolo counties. After that, the Legislature would either abandon the idea or okay statewide implementation. Yet even the modest pilot program will be lucky to get very far in the Legislature. The proposal met its first major obstacle when Placer County voiced reluctance to be included in the project. Like many areas untroubled by court congestion, Placer County is happy with its justice courts' handling of traffic cases. A compromise was reached, allowing for continued justice court jurisdiction, with one slight change: Judges would follow the standard rules and procedures adopted by the AA board when acting as hearing officers for traffic cases. Additionally, it was agreed that if a county becomes unhappy in the pilot program, it can petition to the AA board and withdraw. Similarly, any contiguous county can petition to be included.

Opposing the AA plan is the California Peace Officers' Association, which fears that without the courts' backing, the import of traffic infractions, and peace officers' authority, will decrease. The Teamsters also have come out against the plan, as have other professional truckers and bus drivers. These groups generally oppose stiffer driving penalties, especially suspending licenses, which AA plans to do.

In addition, Teamsters are worried that some AA hearing officers will be DMV veterans who, they feel, will have unavoidable and undesirable DMV-based biases. They also echo some constitutional concerns expressed by a variety of lawyers and legislators: Should the Legislature meddle in

the structure of the judicial branch? Should judges in low-population counties serve as justices for half a day and AA hearing officers the other half? The AA proposal already has been amended to return the burden of proof from "clear and convincing evidence" back to the judicial standard of "beyond a reasonable doubt."

Even more formidable than the constitutional doubts are the fiscal ones. The DMV says similar programs in New York and Rhode Island show an overall fiscal savings, but many legislators feel there are significant hidden costs. To some, AA only sounds like a transfer of high costs and congestion from the courts into a tangled new bureaucracy.

How it would work

Here is how the AA pilot program would operate: The governor would appoint a part-time AA board, responsible for hiring officers, hearing appeals and setting policy. The board also would devise a uniform, graduated-sanction schedule for penalties, based on past driving records. Sanctions would begin with warning letters and move up through driver improvement training, individual counseling, monetary payments (with alternatives for those who can't pay) and finally license suspension. The board would coordinate the program in AA counties with those retaining justice traffic courts, and work to standardize AA procedures throughout the pilot-program area.

For the driver charged with a violation, AA would offer five choices: admission, admission with explanation, denial, denial with waiver of confrontation, and no contest. As long as his or her driving record is good, a driver could simply mail in a fine if choosing "admission" or "no contest." With a poor record (based on a maximum number of infractions over a 36-month period), the driver must appear before a

hearing officer for counseling.

The other three choices of plea require some kind of hearing. "Admission with an explanation" results in a summary hearing, in which a driver gets a chance to explain extenuating circumstances that might alter the penalty but not to confront the citing officer. "Denial" can result in either a summary hearing or a confrontation hearing at which the citing officer must be present — the driver gets the choice. "Denial with waiver of confrontation" allows the driver to offer a defense at a location of his or her choice — a convenience for vacationers and other travelers.

AA hearings would be conducted in an informal manner but would still permit examination of witnesses, subpoenas and evidence introduced through exhibits. After a hearing officer decides that an infraction has been committed, the officer would review the driver's record and issue the appropriate penalty according to the sanction schedule. There would be a certain amount of flexibility built into the schedule, to be used at the hearing officer's discretion. An appeals procedure also would be provided, with the AA board serving as the appeals body.

Despite the opposition, Sillas is optimistic that eventually some form of AA will be approved — if only because the present system is so inadequate. According to DMV, the AA system would standardize procedures, personalize citation hearings, help unclog the courts and — at least in theory — save the state money. Sillas may not be able to convince the Legislature of any benefits, but he emphasizes that the Fazio bill gives counties the option of dropping out, requires annual reports to the governor and the Legislature and covers only a five-year pilot study. The whole program can be scrapped if the experiment doesn't work. Under these conditions, pleads the DMV director, "why not give it a try?"

California CAPSULES

Consultants find strong potential for Auburn quake

The consulting firm of Woodward-Clyde Associates, hired by the federal Bureau of Reclamation to assess earthquake risk at the site of the proposed Auburn Dam, told the government what it didn't want to hear. The consultants reported that there is a chance of a quake of 6.5 on the Richter scale on a fault within three miles of the dam site — 32 times stronger than the 5.5 magnitude previously cited as the maximum by geologists. The report found that there were 30 faults traversing the area. In sum, the report made it less likely than ever that the federal government would proceed with the present plans to build a thin-arch concrete dam.

Levine captures Assembly seat in 44th District

Democrat Melvin E. Levine, a 33-year-old Los Angeles attorney, defeated Republican Dana Reed on June 28th to win the 44th Assembly district seat formerly held by state Senator Alan Sieroty. Results of the special election: Levine, 23,685 or 56 percent; Reed, 18,292 or 44 percent. Levine, a former student body president at the University of California, Berkeley, had finished first in a field of 10 in a May 31st primary. His victory returned the Democratic majority in the Assembly to 57-23.

Surprise report: jobless rate falls below seven percent

California's unemployment rate fell below the national average for the first time in 17 years during June, according to the state Employment Development Department. For the first time in three years, the rate dipped below seven percent, with 6.9 percent of the work force unemployed, compared to a national rate of 7.1 percent. The May rate for California had been 7.8 percent. Why the sudden drop? State officials offered two explanations — the use of a large "seasonal adjustment" figure in the June percentages and a significant upward trend in the construction industry.

Appeals court approves 'arranging' of contributions

A three-justice Court of Appeal in Los Angeles upheld a lower-court ruling allowing lobbyists to recommend to their employers which political contributions they should make. The panel found that restrictions on the "arranging" of contributions by the Fair Political Practices Commission would be unconstitutional. "We can see no valid reason, consistent with free speech, to prevent a lobbyist from telling his employer of the lobbyist's opinion as to an officeholder or candidate's probable future action," the justices stated.

ROLL CALL

The wrapping of a tax package

The Legislature as a whole may have been in recess during July, but two small groups of lawmakers were at work on the most important decisions of the year — what shape tax reform would take and how the *Serrano* school-finance problem would be resolved. The test of strength on *Serrano* involved a relatively simple conflict, if anything concerning school finance can be simple. The key question was whether the package would contain funds for special programs or would consist almost exclusively of funds designed to equalize the amount of money available to educate each child in the state.

By contrast, there were numerous basic issues to be decided before a conference committee could recommend a tax package. And it appeared that the Legislature might approve a bill that contained major elements opposed by Governor Brown. In that event, the Governor might be challenged to kill a property-tax relief measure because it contained offensive income-tax provisions.

The conference committee established by the Legislature consists of three liberals, Senator Nicholas Petris and Assemblymen Willie Brown and Bill Lockyer, and three conservatives (at least on taxation), Senators Jerry Smith and Dennis Carpenter and Assemblyman Jerry Lewis. (Carpenter and Lewis are Republicans, the others Democrats.)

Here are some of the questions they were tackling:

- How much money should be allocated for property tax relief, and how should it be divided between homeowners and renters? What formula should be employed, and should a family-income factor be included?
- Should the business inventory tax be abolished? If so, should the local-government loss in income be offset by an increase in the bank and corporation tax? Or should the money come from the state's huge surplus?
- Should revenue limits be imposed on local government? If so, how stringent should they be?
- Should business and residential property be taxed at different rates?
- Should the lid be lifted on the highest income-tax bracket, now 11 percent, to 15 percent?
- Should a cost-of-living "index" be applied to the state income tax?
- Should the preferential treatment of capital gains be ended?

The Governor had indicated that he opposes any increase in the income tax as well as the indexing plan, which would reduce state revenues. He could get both because the price of a hike to 15 percent, sought by the liberals, could well be indexing, sought by the Republicans.

Senate (26D - 14R)	224 1684 SCA 31 55555	476 587 184 101 164 189 37 884	111 587 184 101 164 189 37 884	224 1684 SCA 31 55555	476 587 184 101 164 189 37 884	111 587 184 101 164 189 37 884
Alquist (D)	Y**Y	YYYY	NNYY	YNYN	YNYN	YNYN
Ayala (D)	YYYY	YY**	NNYY	Y*YY	*YYY	YNYN
Behr (R)	YYYY	NYN	NNYY	YYYY	*YYY	NYN
Beverly (R)	YYYY	YNY	NNYY	YNYN	YYYY	NNYY
Briggs (R)	NY**	YNY	*YYN	Y*YY	NYN	YYN*
Campbell (R)	YYY*	YNY	YYYY	NYYY	YYYY	YYN
Carpenter, D. (R)	N*YN	YNN	NNNY	*NYY	YYYY	NY*Y
Carpenter, P. (D)	YNY	YNY	YYN	YNN	YYN*	**Y*
Cusanovich (R)	YNYN	Y*YY	NN*Y	YNYN	*YYY	YY*
Deukmejian (R)	YNYN	YNN*	NNYY	YNNY	YNYN	YY*
Dills (D)	YNYN	NNYN	YNY	**YY	N*YN	NY*Y
Dunlap (D)	YNY*	YYYY	YYYY	NYN*	YNN	YNY
Foran (D)	*Y*Y	NNY*	Y*NY	YNNY	*YNN	YYYY
Garamendi (D)	YNY	YYYY	YNY	YNNY	YYYY	YNY
Garcia (D)	YN*Y	*YY	YNNY	**YY	YNY	*NNY
Greene (D)	YNY*	*NYY	YNNY	YYY*	YNY	NY*N
Gregorio (D)	Y*YY	YYYY	YNY	YNN	YNNY	NNY
Holden (D)	Y*YY	YYYY	*Y*Y	YYYY	YNY	YNY
Holmdahl (D)	YYYY	YYYY	YNY	Y*NY	YYYY	YNY
Johnson (R)	YYY*	YNYN	YNYN	YYYY	*NYY	YNY
Marks (R)	YNYN	YNYN	YNY	YNYN	YNYN	YNY
Mills (D)	Y*YY	*YYY	YNY	Y*YY	*YYY	YNY
Nejedly (R)	YYYY	*YYY	NYN	YNYN	YYYY	NNY
Nimmo (R)	YNYN	YYYY	NNY	YNYN	YNYN	NNY
Petris (D)	Y*YY	NYN	YYN*	Y*YY	NYN	YYN*
Presley (D)	NYYY	YYYY	YYN	NYYY	YYYY	YYN
Rains (D)	*NYY	YYYY	NY*Y	*NYY	YYYY	NY*Y
Richardson (R)	YNN	YYN*	**Y*	YNN	YYN*	**Y*
Robbins (D)	YNYN	*YYY	YY*	YNYN	*YYY	YY*
Roberti (D)	YNNY	YNYN	YY*	YNNY	YNYN	YY*
Rodda (D)	**YY	N*YN	NY*Y	**YY	N*YN	NY*Y
Russell (R)	NYN*	YNN	YNY	NYN*	YNN	YNY
Sieroty (D)	YNNY	*YNN	YYYY	YNNY	*YNN	YYYY
Smith (D)	YNNY	YYYY	YNY	YNNY	YYYY	YNY
Song (D)	**YY	YNY	*NNY	**YY	YNY	*NNY
Stiern (D)	YYY*	YNY	NY*N	YYY*	YNY	NY*N
Stull (R)	YNN	YNNY	NNY	YNN	YNNY	NNY
Vuich (D)	YYYY	YNY	YNY	YYYY	YNY	YNY
Wilson (D)	Y*NY	YYYY	YNY	Y*NY	YYYY	YNY
Zenovich (D)	YYYY	*NYY	YNY	YYYY	*NYY	YNY

VOTING RECORDS

Listed here are the votes of legislators on recent major roll calls through July. Votes selected involve issues of major importance and issues on which there was a major division of opinion, or both.

Y - Yes

N - No

* — Absent or not voting

A $\frac{2}{3}$ vote is required for urgency measures, constitutional amendments, and appropriations.

Assembly: 41 votes required for passage of bills needing a simple majority. ($\frac{2}{3}$ = 54 votes)

Senate: 21 votes required for passage of bills needing a simple majority. ($\frac{2}{3}$ = 27 votes)

Senate

JUSTICE

SB 224 (Behr) — Grants inmates unemployment benefits upon release from prison. Passed 27 - 9.

SB 684 (Deukmejian) — Authorizes wiretapping of those suspected of narcotics or organized-crime activity, with court approval. Passed 21 - 10.

SCA 31 (Song) — Proposed constitutional amendment requiring that judges retire at 70. Passed 28 - 8.

AB 476 (Boatwright) — Revises new Determinate Sentencing Act to lengthen sentences for some felonies and to give parole authority more time to review sentences of current inmates. Conference report adopted, 27 - 6.

PUBLIC FINANCE

SB 111 (Carpenter) — Requires that an annual cost-of-living index be computed for the state income-tax system. Passed 22 - 11.

SB 587 (Wilson) — Increases cigarette tax from 10 to 13 cents a pack to fund lung-cancer research. Passed 27 - 10.

AB 184 (Boatwright) — Enacts \$14.8 billion

budget for 1977 - 78 fiscal year. Passed 30 - 9.

MISCELLANEOUS

- AB 101** (Greene) — Expands number of nonprofit organizations which may conduct bingo games for charitable purposes, subject to local option. Passed 28 - 8.
- SB 164** (Roberti) — Requires that disputes between local government and firefighters or peace officers be submitted to binding arbitration. Failed 16 - 20.
- SB 189** (Gregorio) — Appropriates \$2.2 million for a public advertising campaign against smoking. Passed 27 - 11.
- SB 37** (Gregorio) — Toughens drunk-driving law by establishing presumption that person with .10 blood-alcohol level is drunk. Passed 21 - 14.
- SB 884** (Roldan) — Increases salaries of all statewide elected officials, except the governor. Passed 29 - 7.

Assembly

HEALTH AND WELFARE

- AB 460** (Egeland) — Permits minors 12 and older to obtain treatment for alcohol or drug abuse without parental consent. Passed 41 - 30.
- AB 1818** (Knox) — Requires that health insurance policies provide coverage for alcoholism. Passed 43 - 30.

HOUSING

- AB 291** (Chacon) — Provides for \$250 million state bond issue if approved by voters in 1978. Passed 58 - 15.
- AB 450** (Goggin) — Limits rent increases for tenants of mobilehome parks. Passed 45 - 17.

JUSTICE

- AB 1624** (Knox) — Revises operations of grand juries and prohibits prosecution of felonies by grand-jury indictment. Passed 55 - 20.
- ACA 4** (Lewis) — Proposed constitutional amendment allowing reporters to refuse to disclose their sources without being held in contempt of court. Adopted 54 - 22.

PUBLIC FINANCE

- AB 184** (Boatwright) — Enacts \$14.8 billion budget for the 1977 - 78 fiscal year. Conference report adopted, 60 - 17.

Assembly (57D - 23R)

	AB 460 AB 1818 AB 291 AB 450	AB 1624 ACA 4 AB 184 ACA 14	AB 1289 AB 1295 AB 1057 AB 1396		AB 460 AB 1818 AB 291 AB 450	AB 1624 ACA 4 AB 184 ACA 14	AB 1289 AB 1295 AB 1057 AB 1396
Agnos (D)	YYYY	YNY	YYYY	Keysor (D)	YYYY	YYYY	YYYY
Alatorre (D)	YYYY	YYYY	YYYY	Knox (D)	YYYY	YNY	YYYY
Antonovich (R)	NNNN	NYNN	NNNY	Lancaster (R)	****	****	****
Arnett (R)	YNY	YNY	NNNY	Lanterman (R)	YNY	YYN	NNNY
Bane (D)	N*YY	YYYY	NNNY	Lehman (D)	YYYY	YYYY	YNY
Bannai (R)	NNN*	NYN	*NNY	Lewis (R)	YNNY	YNN	YN*Y
Bates (D)	YYYY	Y*YY	YYYY	Lockyer (D)	YYYY	YYYY	YYYY
Berman (D)	YYYY	YNY	YYYY	Maddy (R)	*NYN	YNN	NNNY
Boatwright (D)	*NY*	YYYY	YNY	Mangers (D)	YNY	YYYY	N*YN
Brown (D)	YY*	YNY	*YY*	McAlister (D)	NNYN	NNY	NNNY
Calvo (D)	YYYY	YYYY	YYYY	McCarthy (D)	*YYY	YNY	YYYY
Chacon (D)	NY*	NNY	*YYY	McVittie (D)	YYN	YNY	NNNY
Chappie (R)	NNNY	YNN	NNN*	Mello (D)	YYYY	YNY	YYYY
Chel (D)	YNY	YYYY	YNN	Miller (D)	*YYY	YNY	*YYY
Chimbole (D)	NNY	YYYY	NNN	Montoya (D)	*NY*	YNY	*YYY
Cline (R)	YNN	YNN*	NN*Y	Mori (D)	YNY	YYYY	YYYY
Collier (R)	NNNN	*YNN	NNNY	Nestande (R)	YNN	YNN	YNNY
Cordova (D)	YYY*	YNY	NNNN	Papan (D)	NNY*	YNY	YYYY
Craven (R)	NNY	YNN	NNNY	Perino (D)	YNY	YYYY	N*NY
Cullen (D)	YY*N	YYYY	NY**	Priolo (R)	NNNY	NNN	YNNY
Dannemeyer (R)	NNNN	YNN	NNNY	Robinson (D)	YYY*	YYYY	YYYY
Deddeh (D)	NNY	NNY	YNY	Roos (D)	- - -	YYY -	- *-
Dixon (D)	YYN	YNY	YYYY	Rosenthal (D)	YYYY	YYYY	YYYY
Duffy (R)	NN*Y	YNN	Y*NY	Ryan (R)	YYN	YYN	YNNY
Egeland (D)	Y*YY	YYYY	YNY	Satham (R)	YNN	YNN	NNN
Ellis (R)	NNY*	YNN	NNN*	Stirling (R)	NNN*	YNN	NNN*
Fazio (D)	YYYY	YYYY	YYYY	Suitt (D)	NNY	NNY	YNN
Fenton (D)	YYYY	*YYY	Y*NY	Thomas, V. (D)	NNY	YYYY	YYYY
Gage (D)	YYYY	YYYY	YYN	Thomas, W. (R)	****	****	****
Goggin (D)	YYYY	YYYY	YYYY	Thurman (D)	NNYN	YNY	NNY
Greene (D)	YNY*	YNY	YYYY	Torres (D)	YYYY	YYYY	YYYY
Gualco (D)	YYYY	YNY	YYYY	Tucker (D)	YYYY	YYYY	YY*Y
Hallett (R)	NNNN	YNN	YNN	Vasconcellos (D)	YYYY	YYYY	YYYY
Hart (D)	YYYY	YYYY	YYYY	Vicencia (D)	NNY*	YYYY	YNY
Hayden (R)	NNN*	YNN*	YNN*	Waters, M. (D)	YYYY	YNY	YYYY
Hughes (D)	YYYY	YNY	YYYY	Waters, N. (D)	NNY	YYYY	NNYN
Imbrecht (R)	YYYY	YNN*	YNN	Wornum (D)	YYYY	YYYY	YNN
Ingalls (D)	YNN	NNY	YNY	Wray (D)	YYYY	YYYY	YNN
Kapiloff (D)	YYYY	YYYY	YYN	Young (D)	YYY*	YYYY	YYN
Keene (D)	Y*YY	YNY	YYYY				

- ACA 14** (Lockyer) — Proposed constitutional amendment creating preferential property-tax rates for residential, agricultural and open-space parcels. Adopted 55 - 18.

MISCELLANEOUS

- AB 1289** (Lockyer) — Creates a nonprofit corporation to represent consumers before the Public Utilities Commission. Passed 47 - 24.

- AB 1295** (Bates) — Prohibits large employers from firing employees who refuse to work overtime. Passed 43 - 29.
- AB 1057** (Lockyer) — Allows taxpayers to earmark \$1 per year in income taxes to the Democratic or Republican campaign fund. Passed 42 - 30.
- AB 1396** (Papan) — Increases the annual salary of a legislator from \$23,232 to \$25,555, effective December 4th, 1978. Passed 56 - 14.

Selected government reports

Urban Nongrowth: City Planning for People, by Earl Finkler, William J. Toner, and Frank J. Popper. August 1976. 240 pp. Available from Praeger Publishers, 111 4th Avenue, New York, N.Y. 10003. (\$16.50)

State Court Systems (Revised 1976); Council of State Governments. Data on the court systems of all states, 43 pp. Available from the Council, Iron Works Pike, Lexington, Ky. 40511. (\$4)

California Digest, by Connerly & Associates, Inc., 921 11th St., Suite 701, Sacramento 95814. A monthly publication on activities of various state agencies. Annual subscription \$50.

Californians of Spanish Surname, by the state Fair Employment Practices Commission, 1976. A study analyzing changes in population, education, income, employment and other data over a 10-year period. 61 pp. Available from FEPC, Box 603, San Francisco 94101.

New man and a new court

Last March the state Commission on Judicial Appointments confirmed Rose Elizabeth Bird as Chief Justice of the Supreme Court by a 2-1 vote after two tension-packed hearings. There were protests galore, mostly from Republicans, that Bird was not qualified because she had no prior judicial experience.

On July 15th, the commission convened to consider the confirmation of Associate Justice Frank C. Newman, who also had never served as a judge and whose selection should have been anathema to conservatives of California. But not a soul appeared to challenge Newman's appointment by Governor Brown. As head of the commission, Bird reported that she had received about 30 communications, all in favor. Attorney General Evelle J. Younger noted that he had received two adverse letters, but neither of them contained arguments sufficient to hold up Newman's confirmation. Only three witnesses appeared — Superior Judge Bruce Sumner of Orange County, Professor Preble Stolz of the University of California's Boalt Hall and outgoing State Bar President Ralph Gampell of San Jose. All supported Newman, Younger moved that the nomination be confirmed. The vote was unanimous, and Newman replaced 83-year-old Marshall McComb on the state's highest court.

If there is any validity to the argument that Supreme Court justices should serve on the lower courts first, why didn't that reasoning apply to Newman as well as Bird? Did the Republicans choose not to fight Newman because the Bird experience proved that the effort would be fruitless? Or did the Bird appointment look like a better opportunity to embarrass Brown because it was his first nomina-

tion of a high-court justice and because she was a woman from his Administration?

A probable error

Whether the motive was philosophical or political, the Republicans probably made a strategic error in opposing the Bird rather than the Newman appointment. The Bird controversy, if anything, helped Brown because her appointment became an important symbol to many California women, including Republicans. And her appointment, along with that of Associate Justice Wiley Manuel, had very little impact on the ideological balance of the court. Bird and Manuel figure to occupy about the same liberal-to-moderate spot on the philosophical spectrum as the two men they replaced, Chief Justice Donald Wright and Associate Justice Raymond Sullivan.

Newman is a different story. His confirmation marks a significant leftward shift in the balance of the court. In replacing McComb, who was forced to retire because of senility, Newman is taking a seat vacated by perhaps the most conservative member of the panel. And Newman likely will be at least as liberal as any other justice, although he may have competition from holdover justices Stanley Mosk and Mathew Tobriner. Newman, Bird, Mosk and Tobriner give the seven-member court a solid liberal majority.

In 31 years as a professor at Berkeley's Boalt Hall, the 60-year-old Newman has built a reputation as one of the world champions of civil liberties and individual rights. He is an expert on administrative law and the state Constitution, having served as head of the drafting committee of the Con-

stitutional Revision Commission. Newman is an activist with extraordinary vitality, and his colleague Stolz claims, "He and the Governor are the only people with more energy than I know how to handle." He is a prolific writer and, as such, can be expected to author some of the more important decisions expected from the new Brown-built court.

'A legal heavyweight'

The appointment of Newman came as something of a surprise because the Governor had been expected to name the first Chicano to the bench after having chosen a woman and a Black. But Newman's credentials, apparently brought to the Governor's attention by Bird and Stolz (another former Brown aide), apparently made an impression on Brown. Said Gray Davis, Brown's chief of staff, after the nomination was announced, "He is a legal heavyweight . . . in the tradition of Roger Traynor." Traynor, like Newman a former Boalt Hall dean, was a liberal scholar who pioneered some of the judicial-activist principles that were later adopted by the United States Supreme Court.

On the surface, it appears as though there might be a clash of strong personalities between Newman and Chief Justice Bird. But that shouldn't be a problem. Bird is a former student of Newman's, and she has publicly credited him with being one of those most responsible for the progress of her legal career. As chief justice, she will have to devote a great deal of attention to administering the entire California judicial system. Newman, at the same time, can concentrate on the formulation of legal principles that will provoke the kind of Republican screams that were heard at the time of the Bird nomination.

NEWSMAKERS

Yet another farm-labor controversy

Governor Brown assigned one of his cabinet members, Industrial Relations Director **Donald Vial**, to investigate employee complaints about **Harry Delizonna**, general counsel of the Agricultural Labor Relations Board. The ALRB Workers Union has issued a 66-page "bill of particulars" against Delizonna, including a charge of "cavalier disregard" for strong enforcement of the farm-labor law . . . **Charlene Har-**

ington was stripped of her job as supervisor of the state's crackdown on nursing homes and was given another assignment in the Department of Health.

State Senator **Bill Greene** was fined \$4,000 by the Fair Political Practices Commission for failing to report campaign contributions. "We just goofed," explained Greene.

Governor Brown handed a Los Angeles Superior Court judgeship to former Republican state Senator **Robert S. Stevens**, who gave Brown a key vote in the oil-depletion-allowance dispute two years ago . . . Other appointments: singer **Helen Reddy Wald**, to the state Park and Recreation Commission; **William Gregory Craig**, former chancellor of the Vermont State Colleges, as chancellor of the California Community Colleges.

The new 'pork barrel' game

Some new kids on the Congressional block suddenly have jumped into the perennial scramble for "pork barrel" dollars and are giving California and other old-time practitioners quite a run for the money. The interlopers are Northeasterners and Midwesterners who, after seeing federal largesse flow to "Sun Belt" states for a generation or more, finally have woken up and are demanding a bigger slice of the \$450 billion budget pie. With bright young staffs and good organization, they are beginning to flex their legislative muscles. In the first head-on battle, they beat the West and the South hands down.

For California, there is great historical irony as well as a strong economic challenge in this new inter-regional rivalry. For many years, Easterners made a pastime of poking fun at the "pork barrel" exertions of their poor cousins out in the sticks. Let the South rise again on the back of federal subsidies; let the West thrive on federal investments in highways, dams, military bases, atomic laboratories and space exploration — the East was too proud (and too affluent) to engage in such crass exercises. All that has changed now, particularly since New York City's close brush with bankruptcy. The cry is going up from Boston to Chicago that older cities and their economies are falling apart because the federal government has used taxes collected in the East to enrich other regions. They say the time has come to reverse this flow.

The foremost crusader waving this banner is New York's flamboyant junior senator, Daniel Patrick Moynihan. Pointing to a steady loss of jobs in his state, he puts the blame squarely on federal spending policies. New Yorkers, he points out, send to Washington \$3 billion more in federal taxes than they receive back in federal expenditures. This means that the prosperity of Atlanta, Dallas or Sacramento is basically fueled by dollars siphoned off from New York and the Northeast, he declares.

In making this argument, Moynihan is on sound statistical ground. The latest figures show Californians pay 9.6 percent of federal income taxes, but are the beneficiaries of 11.5 percent of all federal outlays. For New York, the reverse is true. It is saddled with 13.5 percent of the tax load but gets back only 11.3 percent in federal spending. While New York suffers a \$3 billion "drain" in its dealings with Washington, California enjoys a favorable net balance of up to \$5 billion a year.

* * *

How long can California continue to wield such a strong magnet over the U.S. treasury? Since inertia is not a negligible factor in governmental affairs, the quick answer is: perhaps for quite a while yet. But there also are signs that leaner days may be ahead — and not just because Moynihan and the Northeast are on the attack.

President Carter's decision to halt production of the B-1 bomber and to slow construction of water projects, including Auburn Dam, is a clear signal that the old-style "pork

barrel" game is losing much of its glitter. While California has profited immensely from military contracts and space projects (the state gets almost one-fifth of the Pentagon's budget and one-third to one-half of the space agency's dollars), it also is highly vulnerable to retrenchments in these areas. The B-1 decision doomed 10,000 jobs in Southern California's aerospace industry. How many more would be lost if Carter succeeds in hammering out a comprehensive strategic arms limitation agreement with the Russians?

Prospects also are not bright on other traditional "pork barrel" fronts. Federal water development is at a virtual standstill. The days of massive space ventures are over. Farm subsidies are on the wane. And Jimmy Carter is determined to balance the budget by 1981.

* * *

"Pork barrel" fights increasingly are shifting to the arena of the new national priorities — energy, social programs, mass transit, welfare reform, health, urban renewal and education. The big payoffs now involve how these federal dollars are to be carved up. Distribution and entitlement formulas for many of these programs are replacing dams, canals and military bases as the pork-barrelers' new hunting grounds. And the evidence at the moment suggests that California is not well equipped to shift gears and hold its own in the rush for this new federal gold.

For example, when Congress voted to renew a multi-billion-dollar program of community development grants, the Northeast-Midwest coalition succeeded in tipping allocations in favor of older cities. Representative Mark Hannaford of Lakewood charged that the formula change was "heavily biased" against the West, the South and the suburbs. Los Angeles and Long Beach will get only about \$20 per resident, he complained, while the entitlements of Boston, Newark and Detroit will be twice as high. The new formula, which carries a \$750 million bonanza for the Midwest and the Northeast, passed easily. The California delegation cast an impotent 33 to 5 vote against it.

President Carter's professed desire to reinvigorate Northern cities in much the same way that Franklin Roosevelt helped rebuild the South is a key factor in the new regional power balance. So is the influence of House Speaker (Tip) O'Neill of Massachusetts.

So far, California Governor Brown does not appear to have grasped the full significance of these shifting priorities and power equations. During his last visit to Washington, he asked for more federal money for solar power and other new energy sources of interest to his state, but his main federal-spending targets still look more to the past than to the future — more California contracts for the cruise missile, more money for water projects, full funding for the space shuttle. That's not exactly the "new spirit" these days in Washington where the cry of savvy politicians is: The old "pork barrel" is dead. Long live the new "pork barrel!"

PHANTOM POLITICS

MARY ELLEN LEARY

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The author is a former political editor for the *San Francisco News*, a long-time political reporter for the Scripps-Howard Newspapers and a frequent contributor to *The Nation*, *The Economist* and other magazines.

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Copies of the 191-page book, published by Public Affairs Press of Washington, D.C., can be ordered from the *California Journal Press*, 1617 10th St., Sacramento 95814. Hardcover, \$10.55; paperback, \$6.31, tax included. Postage is free on prepaid orders only.

PHANTOM POLITICS Campaigning in California

MARY ELLEN LEARY

Courage is what it takes to stand up and speak; courage is also what it takes to sit down and listen.

— Winston Churchill